PUBLIC NOTICE

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

Date: August 3, 2012
In Reply Refer To: Erika Mark
E-mail: Erika.L.Mark@usace.army.mil

REISSUANCE OF THE DEPARTMENT OF THE ARMY NEW HAMPSHIRE PROGRAMMATIC GENERAL PERMIT

The New England District, U.S. Army Corps of Engineers, 696 Virginia Road, Concord, Massachusetts 01742-2751 hereby announces the reissuance of the statewide New Hampshire Programmatic General Permit (PGP), pursuant to 33 CFR Part 325.5(c)(3), for minimal impact activities within the State of New Hampshire. The previous PGP expired on June 28, 2012. The New Hampshire PGP continues the expedited review process for activities in Corps jurisdiction under Section 404 of the Clean Water Act, Section 10 of the Rivers and Harbors Act of 1899 and Section 103 of the Marine Protection, Research, and Sanctuaries Act. This public notice is issued in accordance with 33 CFR 325.10 to ensure potential applicants for permits are informed of the requirements of 33 CFR 320-332 and of the steps required to obtain permits for activities in waters of the U.S. or ocean waters.

General permits are encouraged under the President's plan to streamline state and Federal regulatory programs. This PGP is designed to authorize activities formerly covered under the previous PGP program and the prior PGP that expired on June 28, 2012. This reissued PGP became effective on August 3, 2012. Continued utilization of the general permit process in place of the NWPs will provide important benefits to the public, including simplifying the process, expediting decisions, and providing necessary environmental protection.

Projects with minimal individual and cumulative effects on the aquatic environment will be approved administratively under this PGP. Projects not meeting the PGP's terms and general conditions, of which General Condition 3 requires projects authorized by the PGP to have minimal effects and secondary (indirect) and cumulative adverse environmental impacts, are subjected to an Individual Permit review. Federal exemptions, which are not necessarily the same as the State of New Hampshire's exemptions, are also not altered by the PGP. In addition, for projects authorized pursuant to this PGP, project proponents must obtain the appropriate or State approvals when required in order for this PGP authorization to be valid.

Projects that the Corps authorized under the previous NH PGP prior to issuance of this PGP shall remain authorized as specified in each authorization. Activities authorized pursuant to 33 CFR 330.3 (activities occurring before certain dates) are not affected by this PGP.

You may view the New Hampshire PGP on our web site at www.nae.usace.army.mil. Select "Regulatory/Permitting," "Permits", "State General Permits" and then "New Hampshire." Please contact Erika Mark at (978) 318-8250 or erika.l.mark@usace.army.mil for more information.

Frank J. Delgiudice
Chief, Permits & Enforcement Branch

Enclosure

General Permit No: NAE-R-2012-00339

Effective Date: August 3, 2012

Applicant: General Public in New Hampshire

Expiration Date: August 3, 2017

Department of the Army
Programmatic General Permit
State of New Hampshire

The New England District of the U.S. Army Corps of Engineers (Corps) hereby issues this Programmatic General Permit (PGP) that expedites review of minimal impact work in coastal and inland waters and wetlands within the State of New Hampshire. This New Hampshire PGP minimizes duplication between New Hampshire's Regulatory Program governing work within coastal and inland waters and wetlands and the Corps Regulatory program. Subject to certain exclusions and conditions, the PGP eliminates the need to apply for separate approval from the Corps for most minor, non-controversial work in New Hampshire when that work is authorized by the New Hampshire Department of Environmental Services (DES) Wetlands Bureau.

The Corps will review projects according to the State of New Hampshire classification of Minimum, Minor and Major impact projects per the State of New Hampshire Wetland Rules Env-Wt 100 - 900. The Corps review thresholds (see Appendix A) are typically the same as the State's thresholds, but may differ. For example, the wetland fill thresholds for a Minimum are <3,000 square feet (SF) (State and Corps), Minor [≥3,000 to <20,000 SF (State and Corps)] and Major [≥20,000 SF (State); ≥20,000 SF to <3 acres (Corps)].

I. GENERAL CRITERIA:

Activities with minimal impacts, as specified by this PGP's terms (Pages 1 – 7), general conditions (Pages 8 – 17), and Appendix A - Definition of Categories, qualify for authorization under this PGP as either a Minimum Impact Project, or Minor or Major Impact Project.

Proponents should first review Appendix A - Definition of Categories to see if a project is eligible under this PGP:

- **Minimum Impact Project:**
  [Minimum Impact Projects may proceed after receiving DES Wetlands Bureau authorization unless the applicant receives written notification from the Corps (see Page 3). An application to the State and the secondary impact information required in Appendix B (this is also attached to the State's application) is required for all projects, unless exempt from State regulation.];
- **Minor or Major Impact Project:**
  [Minor Impact Projects may proceed after 30 days from the date of the DES Wetlands Bureau authorization unless the applicant receives written notification from the Corps (see Page 4).
  Major Impact Projects require written authorization from the Corps. An application to and written authorization from the State is required.]

If you determine that your project is eligible as a Minimum impact project after reviewing Appendix A, you must then ensure that your project is in full compliance with this PGP's terms and general conditions. If any of these terms or general conditions is not met, your project must be reviewed under the Minor or Major Impact Project procedures or Individual Permit procedures. The Individual Permit thresholds are defined in Appendix A and the procedures are briefly described on Page 7. This

PGP does not affect the Corps Individual Permit review process or activities exempt from Corps regulation.

II. ACTIVITIES COVERED:

- Work and structures that are located in, or that affect, navigable waters of the United States (U.S.) [33 CFR 328.4(c)] (regulated by the Corps under Section 10 of the Rivers and Harbors Act of 1899);
- The discharge of dredged or fill material into waters of the U.S. (regulated by the Corps under Section 404 of the Clean Water Act)[1]; [33 CFR 323.4, Discharges not requiring permits, states any discharge of dredged or fill material that may result from normal farming, silviculture and ranching activities is not prohibited by or otherwise subject to regulation under Section 404 (except as specified in paragraphs (b) and (c) of that section).] and;
- The transportation of dredged material for the purpose of disposal in the ocean (regulated by the Corps under Section 103 of the Marine Protection, Research and Sanctuaries Act). The term "discharge of dredged or fill material" also includes certain discharges resulting from excavation. Applicants should contact the Corps to determine if a particular excavation discharge occurring within waters or wetlands is a regulated activity.

III. PROCEDURES:

1. <u>State Approvals</u>

a. In order for PGP authorizations 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 (see General Condition 1). Applicants are responsible for applying for and obtaining any of the required State approvals.

(i) Water Quality Certification (WQC) under Section 401 of the Federal Clean Water Act (CWA) (33 USC 1341). The CWA requires applicants to obtain a WQC or waiver from the state water pollution control agency (DES, Watershed Management Bureau) for any activity that may discharge pollutants during construction or operation of the activity. The DES has granted WQC #2012-404P-002 for PGP activities, provided that the applicant obtains the required state wetlands and Alteration of Terrain approvals and complies with PGP conditions. Under condition E-2 of the WQC, PGP activities shall be subject to DES review to determine whether additional conditions or an Individual 401 Certification application is necessary to ensure compliance with surface water quality standards.

(ii) Coastal Zone Management Act (CZMA) Federal Consistency Concurrence pursuant to Section 307 of the CZMA of 1972, as amended. The NH DES administers the NH Coastal Program (NHCP). The NHCP has determined that any project in the NH Coastal Zone that is authorized under the Minimum, Minor or Major Impact Project categories of this PGP is consistent with the NHCP and does not require additional CZMA Federal consistency review. The landward boundary of the state's coastal zone encompasses the jurisdictional borders of the 17 coastal municipalities subject to tidal influence. The seaward boundary of the state's coastal zone extends three nautical miles offshore.

2. <u>Corps Authorizations</u>

The 3 PGP review categories (Minimum, Minor and Major) are listed below. The Corps reserves the right to require a PGP or Individual Permit review for Minimum Impact Projects, or an Individual Permit review for Minor or Major Impact Projects, if the Corps determines the project will have more than minimal environmental impacts, or based on a concern for any other factor of the public interest. Please note that the Corps regulates some waters that the State of New Hampshire does not. In certain

instances the Corps may use this PGP to confirm authorization of those activities provided it meets the terms and conditions outlined in this document.

MINIMUM IMPACT PROJECTS

Eligibility

Activities in NH that:

- Are subject to Corps jurisdiction [see General Condition (GC) 2, Page 8];
- Meet the general conditions of this PGP (Pages 8 - 17);
- Are listed under the heading Minimum Impact Project in Appendix A;
- Meet the definitions of a State of New Hampshire Minimum Impact Project;
- Receive approval from the DES Wetlands Bureau and all other applicable State agencies; and
- Receive all other required Federal and State approvals listed on Page 2;

may proceed upon authorization from the DES Wetlands Bureau if they meet minimum impact project conditions (Appendix A) unless notification is received from the Corps requiring further review or additional information.

Abbreviated Application Procedures (Minimum Impact Project)

Applicants must submit the information in Appendix B, which includes the Corps Secondary Impacts Checklist. For convenience, Appendix B is also attached to the DES Wetlands Bureau applications and Permit by Notification forms. The Corps will review this information for all projects to assess direct, indirect (secondary impacts) and cumulative impacts. The Corps will decide that the project:

- as proposed will have no more than minimal environmental impacts, which means the project may then proceed upon authorization from the DES Wetlands Bureau without waiting for Corps confirmation, or
- will receive a higher review level if there are concerns for the aquatic environment, any other factor of the public interest, or for any potential secondary impacts. If a higher level review is required, the Corps will attach a notification to the DES Wetlands Bureau decision. The Corps will later contact the applicant to notify them of their project status and request any additional information that may be required.

Project proponents seeking Minimum Impact Project authorizations are not relieved of the obligation to comply with this PGP's general conditions (Pages 8 - 17) and other Federal laws such as the National Historic Preservation Act, the Endangered Species Act and the Wild and Scenic Rivers Act. Therefore, consultation with the Corps and/or agencies such as the NH Historic Preservation Officer is required when there is a high likelihood of the presence of resources of concern. Secondary impacts must be included when determining if a project qualifies as a Minimum Impact Project (see GC 3). Fill area includes all temporary and permanent fill. This requirement applies only to projects within Corps jurisdiction.

MINOR AND MAJOR IMPACT PROJECTS

Eligibility

Activities in NH that:

- Are subject to Corps jurisdiction (see General Condition 2, Page 8);
- Meet the general conditions of this PGP (Pages 8 - 17);
- Meet the definition of Minor or Major Impact Projects in Appendix A;
- Meet the definitions of a State of NH Minor or Major Impact Project;

- Meet the definition of Minimum Impact Project but have been determined by the Corps to have concerns for the aquatic environment, any other factor of the public interest, or for any potential secondary impacts (see Page 3);
- Receive approval from the DES Wetlands Bureau and all other applicable State agencies;
- Receive all other required Federal and State approvals (Page 2); and
- Have been reviewed by the Corps and the Federal resource agencies (Page 5);

for **Minor Impact Projects**, may proceed after 30 days from the DES Wetlands Bureau decision unless the applicant receives written notification from the Corps either requesting additional information or requiring modifications to the proposal, or requiring an Individual Permit for the project

for **Major Impact Projects,** may proceed upon receipt of written authorization from the Corps. The Corps will notify the applicant within 30 days from the DES Wetlands Bureau decision if: their project is authorized under the PGP, additional information is needed or an Individual Permit review is required.

Env-Wt 303 Classification of Projects specifies the classifications for Major, Minor and Minimum Impact Projects, which may be further modified by Env-Wt 903 Stream Crossings: Classifications and Applications. The DES Wetlands Bureau will classify a project once it has been found to be technically complete and will provide that classification to the proponent along with their DES Wetlands Bureau decision. For inland wetland fill projects, the DES Wetlands Bureau thresholds are 3,000 to <20,000 SF (Minor Impact Project) and ≥20,000 SF (Major Impact Project). Additional criteria for stream crossings are found in Env-Wt 900.

IV. Application Procedures (Minor and Major Impact Project)

For projects qualifying as Minor or Major Impact Projects, the town clerk will send the original State application package to the DES Wetlands Bureau. After the DES Wetlands Bureau assigns a State file number, the State will make a copy available to the Corps. The State agencies have their own application process and the DES will make applications available to the Corps.

All applicants shall submit a Request for Project Review (RPR) Form (www.nh.gov/nhdhr/review**)** to the NH State Historic Preservation Officer (SHPO) at the NH Division of Historical Resources (see Section VII, Part E) to be reviewed for the presence of historic/ archaeological resources in the permit area that may be affected by the proposed work. The SHPO will notify the Corps if there are State concerns that the proposed work will have an effect on historic resources. The applicant must submit with their application to the DES Wetlands Bureau, either a copy of their cover letter, or a statement of having sent their application materials to the SHPO. This is not required if the Corps or another Federal action agency has satisfied the consultation requirements of Section 106 of the National Historic Preservation Act or if the project is not within Corps jurisdiction.

Information Required:

See Appendix B (required information), which is also an addendum to the New Hampshire DES Wetland Bureau application.

V. Federal/State Review Procedures (Minor and Major Impact Project)

The Corps, Federal resource agencies [U.S. Fish and Wildlife Service (US FWS), U.S. Environmental Protection Agency (EPA), and National Marine Fisheries Service (NMFS)] and the DES Wetlands Bureau will comprise the interagency review team. The Corps will review all applications for Minor and Major projects with the interagency review team at monthly interagency review meetings ("Joint Processing Meetings") at the DES Wetlands Bureau. The Corps and the Federal resource agencies at the branch chief or equivalent level may agree on certain activities that do not require coordination at these meetings or may substitute a different review process.

The Corps may determine on its own or in consultation with the interagency review team, if applications for Minor and Major projects work:

1. Are eligible under the PGP as proposed;
2. Require additional information;
3. Will require project modification, mitigation or other special conditions to avoid or minimize adverse environmental impacts and protect the aquatic environment to be eligible for authorization under this PGP; or
4. Are ineligible under the terms and/or conditions of this PGP;
5. Require Individual Permit review irrespective of whether the terms and general conditions of this PGP are met, based on concerns for the aquatic environment or any other factor of the public interest (see General Condition 4).

If the Corps determines that a project is eligible for this PGP and there are no Federal agency concerns, no further contact with the Corps is necessary.

- **For Minor Impact Projects**, applicants may proceed after the 30 day waiting period.
- **For Major Impact Projects,** the applicant must wait for written authorization from the Corps. If an applicant for a Major Impact Project does not hear from the Corps within the 30 day waiting period, the applicant should call the Corps. To proceed with a Major Impact Project without written authorization is a violation of this permit and the applicant may be subjected to an enforcement action by the Corps.

The Corps or the Federal resource agencies may, within ten business days of the review meeting, 1) Request additional information, 2) recommend modification, mitigation, or special conditions to avoid or minimize adverse environmental impacts associated with the aquatic environment and to ensure the terms and general conditions of the PGP are met.

The Federal resource agencies may request additional information within their area of expertise within ten business days of the review meeting. This information shall be commensurate with the level of impact and agreed upon by the Corps. The agencies are allowed an additional ten business days after their receipt of additional information to provide special conditions. An Individual Permit review may be required if the Corps determines that impacts to the aquatic environment are more than minimal.

The Corps will contact the applicant either by phone or in writing if there are concerns. For additional information requests, the Corps will copy the DES Wetlands Bureau and the Federal resource agency making the request. If the applicant is unable to resolve the concerns or modify the project, the Corps may determine that a project is ineligible under this PGP and will then take discretionary authority and require the applicant to apply for an individual permit. The Corps will do so in writing to the applicant and copy the DES Wetlands Bureau and the pertinent Federal resource agencies. A project may regain

eligibility under the PGP if the applicant subsequently addresses all of the concerns raised to the Corps' satisfaction.

In accordance with regional environmental concerns, projects involving more than 1 acre of impacts (but less than 3 acres) *could* require an Individual Permit review. Projects with impacts >3 acres *would* require an Individual Permit review. Generally, the following types of impacts are viewed as minimal and are eligible for PGP authorization (subject to agency review and Corps approval) for projects impacting between 1 - 3 acres of wetlands:

- Widening of transportation projects and expansions of existing projects.
- Wetland edge encroachments and/or wetland crossings to access usable uplands
- Low value or degraded wetlands

VI. Emergency Procedures: Minor and Major Impact Projects

In accordance with Env-Wt 501, applicants may request, and DES may authorize, work within jurisdiction when there is a threat to public safety, public health or significant damage to private property is imminent and the event causing the emergency occurred within the previous five days. Contact the state in the event of an emergency situation (contact info on page 18.)

The work proponent shall submit a description of all work performed during an emergency, except for those projects classified minimum impact, in lieu of a permit application. Applications as required under Env-Wt 501 shall be submitted for any permanent repairs, restoration, or other activities proposed to be conducted after the emergency has ended.

The Corps will review emergency work and confirm any additional Federal authorizations during real-time review and/or through an after-the-fact permit process. Emergency authorizations shall be limited to stabilization of the site or mitigation of an immediate threat.

VII. Construction of Solid Fill Structures and Fills Along the Coastline or Baseline From Which the Territorial Sea is Measured (Minor and Major Impact Projects)

Projects with construction of solid fill structures or discharge of fill that may extend beyond the coastline or the baseline from which the territorial sea is measured (i.e., mean low water), must be coordinated with Minerals Management Service (MMS), Outer Continental Shelf (OCS) Survey Group, pursuant to the Submerged Lands Act (43 USC 1301-1315, 33 CFR 320.4(f)). The Corps will forward project information to MMS for their review. The MMS will coordinate their determination with the Department of the Interior (DOI) Solicitor's Office. The DOI will have 15 calendar days from the date MMS received the project information to determine if the baseline will be affected. If the Corps is not notified within the 15 day period it will assume a "no effect" determination. If the solicitor's notification to the Corps is verbal, it must be followed with a written confirmation within 10 business days of the date of the verbal notification. This procedure will be eliminated if the State of New Hampshire provides a written waiver of interest in any increase in submerged lands caused by a change in the baseline resulting from solid fill structures or fills authorized under this PGP.

VIII. INDIVIDUAL PERMIT

Work that is in the Individual Permit category listed in Appendix A, or work that does not meet the terms and general conditions of this PGP, will require an application for an Individual Permit from the Corps (33 CFR 325.1). Applicants should submit the appropriate application materials directly to the

Corps as early as possible to expedite the permit review process. General information and application forms can be obtained at our web site or by calling us (see Page 18). Individual 401 WQC and/or CZM Federal consistency concurrence from the appropriate NH agencies are required before the Corps issues an Individual Permit. Filing an Individual Permit application does not relieve the applicant from their obligation to obtain all required Federal and State approvals.

IX. GENERAL PERMIT CONDITIONS:

The following general conditions apply to all activities authorized under this PGP, including all Minimum, Minor and Major Impact Projects.

General Requirements:

1. Other Permits. Authorization under this general permit does not obviate the need to obtain other Federal, state, or local authorizations required by law or to comply with all Federal, State of New Hampshire, or local laws.

2. Federal Jurisdictional Boundaries. Applicability of this PGP 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 328-329. These sections prescribe the policy, practice and procedures to be used in determining the extent of jurisdiction of the Corps concerning "waters of the U.S." and "navigable waters of the U.S." (Note: Waters of the U.S. include the subcategories "navigable waters of the U.S." and "wetlands.") Wetland boundaries shall be determined in accordance with the most recent versions of the a) Corps of Engineers Wetlands Delineation Manual and b) Regional Supplement to the Corps Delineation Manual (see the "Northcentral and Northeast Regional Supplement" for New England states), both located at www.usace.army.mil/CECW/Pages/techbio.aspx. Use the most recently approved version of the National Wetland Plant List at http://wetland_plants.usace.army.mil. The Natural Resources Conservation Service (NRCS) publishes the current list of hydric soil indicators at http://soils.usda.gov (click "Hydric Soils"). The regional guide "Field Indicators for Identifying Hydric Soils in New England, Version #3" at www.neiwpcc.org/hydricsoils.asp may be used as a supplement in problem soil situations.

3. Minimal Effects and Secondary (Indirect) and Cumulative Impacts. Projects authorized by this PGP shall have no more than minimal individual, secondary and cumulative adverse environmental impacts to waters of the U.S. as a result of construction and operation of the project. The PGP does not impose any obligation on DES to assess secondary impacts that does not already exist in state law. See Appendix A, Endnote 3 for a secondary impacts definition. In order for the Corps to determine whether independent Corps review of a project with possible secondary and cumulative impacts is required, applicants must complete the Corps Secondary Impacts Checklist at Appendix B. For convenience, Appendix B is also provided as an attachment to the DES Wetlands Bureau application and Permit by Notification forms.

- For waterway and/or wetland areas, secondary impacts (e.g., areas drained, flooded, cleared, excavated or fragmented) shall be added to the total fill area when determining the project review category (Minimum, Minor/Major or Individual Permit review) for the Corps**.**
- For the project area, the Corps, State and Federal resource agencies will review projects to determine if there are discernible secondary impacts on waters and wetlands necessitating a higher review level. The Corps Secondary Impacts Checklist will assist with this review.

4. Discretionary Authority. Notwithstanding compliance with the terms and general conditions of this PGP, the Corps retains discretionary authority to require either a Minor/Major Project review or an

Individual Permit review for any project, including a higher level review for a Minimum Impact Project, 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 either a Minor/Major Project review or an Individual Permit review based on the concerns stated above. This authority may be invoked for projects with cumulative environmental impacts that are more than minimal, or if there is a special resource or concern associated with a particular project that is not already covered by the remaining conditions of the PGP and that warrants greater review. Whenever the Corps notifies an applicant that either a Minor/Major Impact Project review or Individual Permit review is required, authorization under this PGP is void, and no work may be conducted until the Corps issues the required authorization or until the Corps notifies the applicant that further review has demonstrated that the work may proceed under this PGP.

5. Single and Complete Projects. This PGP 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 shall be treated together as constituting one single and complete project, unless the Corps determines that a component has independent utility. For linear projects, such as power lines or pipelines with multiple crossings, the "single and complete project" (i.e., single and complete crossing) will apply to each crossing of a separate water of the U.S. (i.e., single waterbody) at that location; except that for linear projects crossing a single waterbody several times at separate and distant locations, each crossing is considered a single and complete project, and may qualify for Minimum Impact Project eligibility. (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.) If any crossing requires a Minor/ Major Impact Project review, then the entire linear project shall be reviewed as one project under the Minor/Major Impact Project review procedures provided that the impact thresholds in Appendix A are met. Also, this PGP shall not be used for any activity that is part of an overall project for which an Individual Permit is required, unless the Corps determines the activity has independent utility. Note that modifications to State permits may not constitute a separate project. Modifications which involve Corps jurisdiction will be reviewed at the regular review meetings in order to ascertain compliance with the PGP. Keep in mind that a linear project normally qualifying as a Minimum Impact Project will trigger a higher-level Corps review if the impacts exceed this PGP's general conditions.

6. Permit On-Site. For Minor/Major projects, the permittee shall ensure that a copy of this PGP and the accompanying authorization letter are at the work site (and the project office) authorized by this PGP 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 PGP. This shall be achieved by including the entire permit authorization in the specifications for work. The term "entire permit authorization" means this PGP 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 as a change order. 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 PGP authorization, and no contract or sub-contract shall require or allow unauthorized work in areas of Corps jurisdiction.

General Conditions Related to National Concerns:

7. Historic Properties. No activity otherwise authorized by this PGP shall result in effects (as that term is defined at 36 C.F.R. § 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 agency has satisfied the consultation requirements of Section 106 of the National Historic Preservation Act. Work is not eligible for a Minimum impact permit 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 on, or potentially eligible for listing on the National Register of Historic Places, including previously unidentified properties. Work is eligible for a Minimum impact permit if a no effect or no adverse effect determination has been made for that work by another federal action agency in its Section 106 consultation with the New Hampshire Historic Preservation Office (SHPO). Information on the location and existence of known historic resources can be obtained from the SHPO and the National Register of Historic Places. Historic properties include those that are eligible for inclusion, but not necessarily listed on the National Register. 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 and the SHPO.

8. National and Corps Lands. Activities authorized by this PGP shall not 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 U.S. FWS, U.S. Forest Service, National Oceanic and Atmospheric Administration**,** or National Park Service. No Minimum Impact Project work is allowed on Corps properties & Corps-controlled easements (see Appendix A, Endnote 8).

9. Endangered Species.

(a) No activity may be authorized under a Minimum impact category of this PGP 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) Work in Inland Waters and Wetlands[1] and the non-tidal portions of Navigable Waters[2] (e.g., the Piscataqua River) is not eligible for a Minimum impact permit if:

i. The project action area occurs within a watershed occupied by listed Atlantic sturgeon and/or shortnose sturgeon. Project proponents must check the site[3] below.

ii. In areas outside these watersheds contact the USFWS to check for the presence of other listed species.

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[1] See Appendix A, Page 1 for definition.

[2] See Appendix A, Page 4 for definition.

[3] For areas considered occupied by listed Atlantic and/or shortnose sturgeon in Inland Waters and Wetlands, and in Navigable Waters, see: www.nero.noaa.gov/prot_res.

(c) Work in the tidal portions of Navigable Waters may be eligible for Minimum impact permit. Reference Appendix A, II. Navigable Waters, Pages 4 – 9, and the other terms and general conditions (GC 10 is particularly relevant) of this PGP to determine Minimum impact eligibility. Project proponents must contact the USFWS (see Page 1 for contact information) to ensure that work in all tidal portions of Navigable Waters is not in critical habitat or areas occupied by listed species other than Atlantic and/or shortnose sturgeon.

(d) Although some work is excluded from Minimum impact as stated in (b) and (c) above, work may qualify for Minimum impact if a no effect determination has been made for that work by a federal action agency such as the Corps.

(e) Proponents must submit an application to the Corps if any of the activities in 9(a)-9(c) that do not qualify for a Minimum impact authorization may occur and provide information on federally-listed species or habitat to allow the Corps to conduct any required consultation under Section 7 of the ESA.

(f) The Corps review may consider species listed as endangered and threatened pursuant to New Hampshire state law.

10. Essential Fish Habitat (EFH). As part of the PGP review process, the Corps will coordinate with 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 (NH species include Atlantic and shortnose sturgeon). 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 at www.nero.noaa.gov/hcd.webintro.html. The NMFS has established a web site at www.nero.noaa.gov/HCD/appguide1.html.

11. Wild and Scenic Rivers. Any activity that occurs in a component of, or within 0.25 miles up or downstream of the main stem or tributaries of a river segment of, or that has the potential to alter flows within a river within the National Wild and Scenic River System, must be reviewed by the Corps under the review procedures of this PGP regardless of the size of impact. This condition applies to both designated Wild and Scenic Rivers and rivers officially designated by Congress as Study Rivers for possible inclusion while such rivers are in an official study status. If pre-application consultation between the applicant and the administering agency [National Park Service (NPS) or USDA Forest Service] has occurred whereby NPS has made a determination that the proposed project is appropriate for authorization under this PGP (with respect to Wild and Scenic River issues), this determination should be furnished to the Corps with submission of the application. National Wild and Scenic Rivers System segments for New Hampshire as of February 2007, include: Wildcat Brook from its headwaters to the confluence with the Ellis River (administered through the White Mountain National Forest), and the Lamprey River from the West Epping Dam to the confluence with the Piscassic River (administered by the NPS, Northeast Region).

12. Federal Navigation Project. Any 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 subject to removal at the owner's expense prior to any future Corps dredging or the performance of periodic hydrographic surveys. See Appendix D for a list of FNPs.

13. 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 operations by the U.S. 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.

14. Federal Liability. In issuing this PGP, 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 PGP; (d) design or construction deficiencies associated with the permitted work; (e) damage claims associated with any future modification, suspension or revocation of this permit.

General Conditions Related to Minimizing Environmental Impacts:

15. Avoidance, Minimization and Mitigation. Discharges of dredged or fill material into waters of the U.S. and any secondary impacts shall be avoided and minimized to the maximum extent practicable. Permittees may only fill those jurisdictional wetlands and waterways that the Corps authorizes to be filled and impact those areas that the Corps authorizes as secondary impacts. If not specifically authorized, any unauthorized fill or secondary impact to wetlands may be considered as a violation of the CWA. Mitigation will likely be required for fills >10,000 SF, stream work >200 linear FT, and other circumstances (see Env-Wt 302 and 800).

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

16. Heavy Equipment in Wetlands. Heavy equipment other than fixed equipment (drill rigs, fixed cranes, etc.) working in wetlands shall not be stored, maintained or repaired in wetlands, unless it is less environmentally damaging otherwise, and as much as possible shall not be operated there. Where construction requires heavy equipment operation in wetlands, the equipment shall either have low ground pressure (<3 psi), or shall not be located directly on wetland soils and vegetation; it shall be placed on swamp mats[4] that are adequate to support the equipment in such a way as to minimize disturbance of wetland soil and vegetation. Swamp mats are to be placed in the wetland from the upland

[4] "Swamp mats" is a generic term 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 type of swamp mat is a timber mat, which consists of large timbers bolted or cabled together. Corduroy roads, which are not considered to be swamp 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 swamp mats, they are considered as fill whether they're installed temporarily or permanently.

or from equipment positioned on swamp mats if working within a wetland. Dragging swamp mats into position is prohibited. Other support structures that are less impacting and are capable of safely supporting equipment may be used with written Corps authorization. Similarly, not using mats during frozen, dry or other conditions may be allowed with written Corps authorization. (See GC 17 below.) An adequate supply of spill containment equipment shall be maintained on site. Corduroy roads and swamp/construction mats are considered as fill whether they're installed temporarily or permanently.

17. Temporary Fill. If a project's combined temporary and permanent fill totals <3,000 SF, the project may be authorized as a Minimum Impact Project if it meets this definition in Appendix A and it is in compliance with this PGP's terms and general conditions. If a project's combined temporary and permanent fill is ≥3,000 SF, no temporary fill (e.g., access roads, cofferdams) shall be placed in waters of the U.S. (including wetlands) unless the Corps conducts a Minor/Major Impact Project review and 30 days have elapsed after receiving your DES Wetlands Bureau authorization without hearing from the Corps. See GC 3 for calculating secondary impacts.

- Swamp/construction mats and corduroy roads (see GC 16 above) are considered temporary fill for new authorizations when they are removed immediately upon work completion.
- All temporary fill shall be stabilized to prevent its eroding into portions of waters of the U.S. where it is not authorized.
- Unconfined temporary fill authorized for discharge into waters of the U.S. shall consist of material that minimizes impacts to water quality (e.g. sandbags or clean, gravel and/or stone).
- Temporary fill authorized for discharge into wetlands shall be placed on geotextile fabric laid on the pre-construction wetland grade. (Swamp and timber mats are excluded from this requirement.)
- Temporary fill shall be removed as soon as it is no longer needed, and it shall be disposed of at an upland site and suitably contained to prevent its subsequent erosion into waters of the U.S.
- Waters of the U.S. where temporary fill was discharged shall be restored (see GC 18).
- If temporary fill is staged and then returned to its original location, e.g., sewer projects through wetlands, the original location shall be restored.
- Temporary fills shall be disposed of at an upland site and suitably contained to prevent erosion and/or transport to a waterway or wetland.
- Swamp mats shall be properly installed (i.e., not dragged into position) and removed immediately upon the completion of work.

18. Work Site Restoration.

- Upon completion of construction, all disturbed wetland areas shall be properly stabilized. Any seed mix shall contain only plant species native to New England.
- The <u>introduction</u> or <u>spread</u> of invasive plant species in disturbed areas is prohibited (see GC 25).
- 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.
- 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.

19. Sedimentation and Erosion Control. Adequate sedimentation and erosion control management measures, practices and devices, such as phased construction, vegetated filter strips, geotextile silt fences, stormwater detention and infiltration systems, sediment detention basins, or other devices shall

be installed and properly maintained to reduce erosion and retain sediment on-site during and after construction. They shall be capable of preventing erosion, of collecting sediment, suspended and floating materials, and of filtering fine sediment. The disturbed areas shall be stabilized and these devices shall be removed upon completion of work. The sediment collected by these devices shall be removed and placed at an upland location, in a manner that will prevent its later erosion into a waterway or wetland. All exposed soil and other fills shall be permanently stabilized at the earliest practicable date.

20. Bank Stabilization. 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. Applicants must use the least intrusive method to stabilize the bank, follow the details at Env-Wt 404 Criteria for Shoreline Stabilization and the following sequential minimization process: diversion of water, vegetative stabilization, stone-sloped surfaces, and walls. Vertical bulkheads should only be used in situations where reflected wave energy can be tolerated. 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 at http://chl.erdc.usace.army.mil. Select "Products/Services" and then "Publications." Part 5, Chapter 7-8, a (2) c is particularly relevant.

21. Waterway/Wetland Work and Crossings

(a) All temporary and permanent crossings of waterbodies and wetlands shall be suitably culverted, bridged, or otherwise designed to withstand and to prevent the restriction of high flows, to maintain existing low flows, and to not obstruct the movement of aquatic life indigenous to the waterbody beyond the actual duration of construction.

(b) Aquatic Life Movements. No activity may 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, unless the activity's primary purpose is to impound water.

(c) All temporary and permanent crossings of rivers, streams, brooks, etc. (here on referred to as "streams") shall conform to the "New Hampshire Stream Crossing Guidelines, May 2009" http://www.unh.edu/erg/stream_restoration/. The Corps shall review projects under the Minor/Major or IP review procedures if conforming to the Guidelines is impractical. The Guidelines typically require bridge spans, open bottom arches or embedded culverts. Bridge spans are generally preferred.

(d) The requirements to comply with the Guidelines in order to proceed as a Minimum Impact Project as stated in (c) above does not apply to the following:

i. Temporary crossings in place for less than 90 days (the requirements in (a) do apply). Temporary culverts must be embedded unless they're installed during low flow (Jul. 15 – Oct. 1), the appropriate culvert radius is 36 inches or less, and it's placed on geotextile fabric laid on the stream bed to ensure restoration to the original grade;

ii. Constructed drainage systems designed primarily for the conveyance of storm water or irrigation. Also, non-tidal drainage and irrigation ditches excavated on dry land are not Federally-regulated.

(e) Only maintenance or replacement of serviceable crossings with an exact replica crossing (size, material, elevation, etc.) in the same footprint with no expansion or change in use/circumstances is considered as a maintenance project, and therefore may proceed as a Minimum Impact Project. Any deviation deems the crossing as "new." Note: The State of NH's maintenance provisions differ from the Corps and will likely require reporting and written authorization from the State.

(f) Culverts at wetland and waterbody crossings shall be installed in such a manner as to preserve hydraulic connectivity, at its present level, between the wetlands on either side of the road. The permittee shall take necessary measures to correct wetland damage due to lack of hydraulic connectivity.
(h) No projects involving open trench excavation in flowing waters are allowed to proceed as a Minimum Impact Project. Open trench excavation projects may qualify for the PGP if they are reviewed pursuant to the Minor/Major project review procedures and conditioned to protect the aquatic environment [work should not occur in flowing waters (requires using management techniques such as temporary flume pipes, culverts, cofferdams, etc.) and normal flows are maintained within the stream boundary's confines (see Appendix A, Endnote 5)]. Projects utilizing these management techniques must meet the other Minimum Impact Project requirements (see Appendix A) and all of this PGP's terms and general conditions. If not, they will require review under the Minor/Major project review procedures.
(i) Construction equipment crossing or accessing streams without using temporary bridges, culverts or cofferdams are not eligible as a Minimum Impact Project. (Note: Areas of fill and/or cofferdams must be included in total waterway/ wetlands impacts to determine applicability of this PGP).
(j) For projects that otherwise meet the definition of a Minimum Impact Project, in-stream (e.g., rivers, streams, brooks, etc.) construction work shall be conducted only during the low flow period of July 15 – October 1 in any year. Projects that are conducted outside of that time period are ineligible as a Minimum Impact Project and shall be reviewed pursuant to Minor/Major Impact Project procedures, regardless of the waterway and wetland fill and/or impact area.
(k) Any work that impacts upstream or downstream flooding or wetlands must be reviewed under the Minor/Major Project procedures.

22. Water Pollution Prevention and Control. Construction or operation of any activity involving a discharge into a water of the U.S. authorized under this PGP 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 permit, the authorized work shall be modified to conform to 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. Any activity involving a discharge of pollutants shall be constructed and operated so that the activity results in no additional discharge of relevant pollutants to impaired waters. Projects will be reviewed to determine if a project may result in a discharge of a relevant pollutant to an impaired water. Any project which may result in a discharge of a relevant pollutant into an impaired water will necessitate a higher-level review. Unless otherwise notified by the NH DES, applicants may presume that the Section 401 WQC for this PGP constitutes the Section 401 WQC for their Section 404 activity, provided the terms and conditions of this PGP are met.

23. Spawning Areas. Discharges of dredged or fill material, and/or suspended sediment producing activities in fish and shellfish spawning or nursery areas, or amphibian and migratory bird breeding areas, during spawning or breeding seasons shall be avoided. Impacts to these areas shall be minimized to the maximum extent practicable during all times of the year. Information on spawning habitat for species managed under the Magnuson-Stevens Fishery Conservation and Management Act (i.e., EFH for spawning adults) can be obtained from the NMFS website at: www.nero.noaa.gov/hcd.

24. Storage of Seasonal Structures. Coastal structures such as pier sections, floats, etc., 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 above mean high water (MHW) and not in tidal wetlands. 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 and the substrate seaward of MHW.

25. Environmental Functions and Values. The permittee shall make every reasonable effort to 1) carry out the construction or operation of the work authorized herein in a manner that minimizes adverse impacts on fish, wildlife and natural environmental values, and 2) prohibit the establishment or spread of plant species identified as non-native invasive species by any Federal or State agency. See the section on Invasive Species at http://www.nae.usace.army.mil/Regulatory/ for control methods.

26. Protection of Special Resources (Special Aquatic Sites, Shellfish Beds, Special Wetlands and Vernal Pools).
These are defined at Appendix A, Endnotes/Definitions. These waters (e.g., riffle and pool complexes) and wetlands are more valuable and may be more sensitive to fragmentation, non-point source runoff, and other secondary impacts. Secondary impacts (e.g., site clearing, grading, and construction activities) should be limited.
Special Aquatic Sites (SAS): Projects with temporary or permanent fill in, or secondary impacts to, SAS (other than inland wetlands) do not qualify for this PGP (see Appendix A). For Minor/Major projects, all SAS (other than inland wetlands) within the project area shall be delineated.
Shellfish beds: Projects proposing to fill or dredge in NH Fish and Game designated shellfish beds (open or closed) used for recreation harvest, whether directly or indirectly, do not qualify for authorization under this PGP and must be reviewed as an Individual Permit project. Applicants must ensure that all projects proposed in or adjacent to any shellfish beds identified on these maps are designed to avoid and minimize adverse affects. Maps of designated shellfish beds used for recreation harvest are located at:
www.nae.usace.army.mil/reg/NHFGRecreatonHarvestShellfishBeds.pdf.
New Hampshire Special Wetlands: Projects with temporary or permanent fill in, or secondary impacts to special wetlands, do not qualify as a Minimum impact project (see Appendix A) except where an applicant has adopted NHB and/or Fish and Game recommendations to avoid impacts to the special wetland. For Minor/Major projects, the applicant shall delineate all special wetlands including VPs on the property using Federal delineation methods (see GC 2). The Corps and the DES may waive these delineation requirements on a case-by-case basis after consultation with the each other, the EPA and U.S. FWS. Naturally vegetated upland buffers are especially essential to protect their functions.
Vernal Pools (VP): These are a type of Special Wetland. The applicant must minimize surrounding upland impacts to the greatest extent practicable, with the effort to minimize impacts being commensurate with the value of the VP. Impact minimization should be in accordance with *Best Development Practices: Conserving pool-breeding amphibians in residential and commercial development in the northeastern U.S.*, 2002; Calhoun and Klemens. 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. For Minor/Major Impact projects, the applicant shall delineate all VPs on the property in accordance with Federal boundaries (see GC 2). The Corps may waive this requirement on a case-by-case basis.

Procedural Conditions:

27. 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 permit. The Corps may also require post-construction engineering drawings for completed work, and post-dredging survey drawings for any dredging work.

28. Maintenance. The permittee shall maintain the work authorized herein in good condition and in conformance with the terms and general conditions of this permit. Permittees must contact the Corps if maintenance will not take place or if they want to modify the existing project design. The requirement to maintain the authorized work does not include maintenance of dredging projects. Maintenance dredging is subject to the review thresholds in Appendix A and/or any special conditions included in a written Corps authorization. Maintenance dredging includes only those areas and depths previously authorized by the Corps and dredged.

29. Property Rights. This PGP 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.

30. Modification, Suspension, and Revocation. This PGP 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.

31. Restoration Directive. The permittee, upon receipt of a notice of revocation of authorization under this PGP, shall restore the wetland or waterway to its former conditions without expense to the U.S., 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.

32. Special Conditions. The Corps may impose other special conditions on a project authorized pursuant to this PGP 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 general conditions of the authorization, including special conditions, constitutes a permit violation and may subject the permittee to criminal, civil, or administrative penalties or restoration.

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

34. Abandonment. If the permittee decides to abandon the activity authorized under this PGP, 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.

35. Enforcement cases. The PGP does not apply to any existing or proposed activity in Corps jurisdiction associated with a 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/Grandfathering:

36. Duration of Authorization. The expiration date for individual projects authorized under this PGP coincides with that of the State authorization for that particular project.

This PGP will expire on August 3, 2017. Activities authorized under this PGP, however, which are under construction or are under contract to begin construction in reliance upon this authorization, will

remain authorized provided the activity is completed within twelve months of the expiration date on this permit, unless:

a) the PGP is either modified or revoked; or
b) discretionary authority has been exercised in accordance with 33 CFR 325.2(e) (2).

Activities completed under this PGP will continue to be authorized by the PGP after the expiration date.

37. Previously Authorized Activities.
(a) Projects that the Corps authorized under the previous NH PGP prior to issuance of this PGP shall remain authorized as specified in each authorization.
(b) Activities authorized pursuant to 33 CFR 330.3 (activities occurring before certain dates) are not affected by this PGP.

Frank S. Del Giudice
Frank S. Del Giudice 8/3/2012
For Chief, Regulatory Division Date

VI. NH PGP CONTACTS:

1. FEDERAL

U.S. Army Corps of Engineers
New England District, Regulatory Branch
696 Virginia Road
Concord, MA 01742-2751
(800) 343-4789, (978) 318-8335
(978) 318-8303 (fax)

(Federal Endangered Species)
U.S. Fish and Wildlife Service
70 Commercial Street
Suite 300
Concord, NH 02813
(603) 223-2541

National Park Service
National Park Service
North Atlantic Region
15 State Street
Boston, MA 02109
(617) 223-5191

U.S. Environmental Protection Agency
Region 1
1 Congress Street, Suite 1100
Boston, MA 02114-2023
(617) 918-1589

(Federal Endangered Species & EFH)
National Marine Fisheries Service
Northeast Regional Office
55 Great Republic Drive
Gloucester, MA 01930
(978) 281-9102

Natural Resources Conservation Service
Federal Building
2 Madbury Road
Durham, NH 03824-2043
(603) 868-7581

2. STATE

DES Wetlands Bureau
29 Hazen Drive
Concord, NH 03302
(603) 271-2147, (603) 271-6588 (fax)

New Hampshire Coastal Program
222 International Drive, Suite 175
Portsmouth, NH 03801
(603) 559-1500, (603) 559-1510 (fax)

NH Division of Historical Resources
State Historic Preservation Office
19 Pillsbury Street
Concord, NH 03301-3570
(603) 271-3483

(State Endangered Species)
Natural Heritage Bureau
172 Pembroke Road
P.O. Box 1856
Concord, NH 03302
(603) 271-2215, x323

(State Endangered Species)
NH Fish and Game Department
Non-Game Endangered Wildlife Program
11 Hazen Drive
Concord, NH 03302-0095
(603) 271-3421

3. ORGANIZATIONAL WEBSITES

Corps of Engineers	http://www.nae.usace.army.mil/Regulatory
Corps of Engineers, headquarters	www.usace.army.mil
Environmental Protection Agency	www.epa.gov/owow/wetlands
National Marine Fisheries Service, Northeast Region	www.nero.noaa.gov/hcd
National Marine Fisheries Service, National Headquarters	www.nmfs.noaa.gov/habitat
U.S. Fish and Wildlife Service	www.fws.gov
National Park Service	www.nps.gov/rivers/index.html
NH DES Wetlands Bureau	www.des.nh.gov/organization/divisions/water/wetlands/index.htm
NH wetlands rules	www.des.nh.gov/organization/commissioner/legal/rules/index.htm#wetlands
NH Fish and Game Department	www.wildlife.state.nh.us
NH Fish and Game Department Marine	www.wildlife.state.nh.us/marine
NH Coastal Program	http://des.nh.gov/organization/divisions/water/wmb/coastal/index.htm
NH Division of Historical Resources	www.nh.gov/nhdhr
NH GIS	www.granit.unh.edu
NH Natural Heritage Bureau, Dept. of Resources and Economic Development	nhnaturalheritage.org

APPENDIX A: DEFINITION OF CATEGORIES

The Corps must review all projects not qualifying as a Minimum Impact Project as a Minor, Major or Individual Permit project. All Minimum, Minor/Major Impact Projects must comply with all of this PGP's applicable terms (Pages 1 - 7) and general conditions (GCs) (Pages 8 - 17). Proponents must read the entire PGP and Appendices to determine the reporting requirements for their project. E.g., a project may appear to qualify as a Minimum Impact Project when reviewing "(c) BANK STABILIZATION PROJECTS." However, if the project fills over 3,000 SF of wetlands or waterways (see (a) NEW FILL/EXCAVATION DISCHARGES below), impacts historic properties (GC 7, Page 9), endangered species, (GC 9, Page 10), or doesn't meet the Minimum Impact Project requirements stated in any other general condition(s), Corps review is required.

I. INLAND WATERS & WETLANDS	**Inland Waters and Wetlands:** Waters that are regulated under Section 404 of the CWA, including rivers, streams, lakes, ponds and wetlands [33 CFR 328.4) (c)]. This Inland Waters and Wetlands section excludes tidal waters, but regulates fill in the Federally-designated navigable waters (Merrimack River from the MA-NH State line to Concord, NH); Lake Umbagog within NH; and the Connecticut River from the MA-NH State line to Pittsburg, NH. 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 PGP, fill placed in the area between the mean high water (MHW) and the high tide line (HTL), and in the bordering and contiguous wetlands[1] to tidal waters are reviewed in II. Tidal/Navigable Waters (see Page 4 below).		
	MINIMUM IMPACT PROJECTS [2]	**MINOR & MAJOR IMPACT PROJECTS**	**INDIVIDUAL PERMIT**
(a) NEW FILL/ EXCAVATION DISCHARGES	<3,000 SF of waterway and/or wetland fill and secondary[3] impacts, (e.g., areas drained, flooded, cleared, excavated or fragmented). Fill area includes all temporary and permanent fill, and certain excavation discharges (except for incidental fallback[4]). Swamp mats and corduroy roads are considered as fill (see General Condition (GC) 17). Provided: • Projects comply w/all GCs, including: GC 5 - Single and Complete Projects GC 15 - Avoidance, Minimization and Mitigation This category excludes: • Dams, dikes, or activities involving water diversions[5]. • Work in EFH waters (see GC 10 and Appendix C) • Work in special aquatic sites (SAS) [6] other than wetlands, and work in special wetlands[7] [including vernal pools[7] (VPs)]. • Work on Corps properties & Corps-controlled easements[8]	3,000 SF to ≤3 acres waterway and/or wetland fill and secondary[3] impacts, (e.g., areas drained, flooded, cleared, excavated or fragmented). Fill area includes all temporary and permanent fill, and certain excavation discharges (except for incidental fallback[4]). Swamp mats and corduroy roads are considered as fill (see GC 17). Swamp mats of any area necessary to conduct activities that were previously authorized, authorized under a Minimum impact permit, or not subject to regulation. Other temporary or permanent fill and associated secondary impacts ≥3,000 SF are reviewed as Minor Impact Projects (see GCs 16 & 17). Projects with proactive restoration as a primary purpose with impacts of any size. Specific activities with impacts of any area required to effect 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. The applicant shall delineate all special wetlands[7] including VPs on the property using Federal delineation methods (see GC 2). The Corps and the DES may waive these	>3 acres waterway and/or wetland fill and secondary[3] impacts, (e.g., area drained, flooded, cleared, excavated or fragmented). Fill area includes all temporary and permanent fill, and certain excavation discharges (except for incidental fallback[4]).

		delineation requirements on a case-by-case basis after consultation with each other, the EPA and U.S. FWS.	
(b) RIVER/STREAM /BROOK WORK & CROSSINGS. WATERWAY/ WETLAND CROSSINGS	Stream crossings conform with the NH Stream Crossing Guidelines and this PGP's general conditions. The requirements in GC 21 are especially relevant: • In-stream work limited to Jul 15-Oct 1. • Culverts at waterbody crossings preserve hydraulic connectivity, at its present level, between the wetlands on either side of the road. Excludes: • No open trench excavation in flowing waters (GC 21). • Work in SAS[6] and special wetlands[7] (GC 26). • Work in EFH waters (see GC 10 and Appendix C). • No work on Corps properties & Corps-controlled easements[8].	Stream crossings not conforming with the NH Stream Crossing Guidelines. All SAS[6] & special wetlands[7] within the project area shall be delineated.	
(c) BANK STABILIZATIO N PROJECTS	Inland bank stabilization <100 FT long and <1 CY of fill per linear foot below ordinary high water (OHW) Provided: • In-stream work limited to Jul 15-Oct 1. • No work in VPs[7] • No work in SAS[6] and special wetlands[7]. • No open trench excavation in flowing waters (see GC 21). • No structures angled steeper than 3H:1V allowed. Only rough-faced stone or fiber roll revetments allowed. • No work on Corps properties & Corps-controlled easements[8].	Inland bank stabilization projects ≥100 FT long or ≥1 CY per linear foot below OHW. All SAS[6] & special wetlands[7] within the project area shall be delineated. The Corps may waive this requirement on a case-by-case basis in consultation with the EPA, NMFS and U.S. FWS.	
(d) REPAIR AND MAINTENANCE OF AUTHORIZED FILLS	Repair/maintenance of existing, currently serviceable, authorized fills, including maintenance of existing flood control facilities, with no expansion or change in use. • Conditions of the original authorization apply • Minor deviations in fill design allowed[10]. Note: The State's maintenance provisions differ from the Corps and may require written authorization from the State, even though it's not required from the Corps.	Repair/maintenance of existing, currently- serviceable, authorized fills, with an expansion or a change in use ≥3000 SF and <3 acres. Replacement of non-serviceable authorized fills ≥3000 SF and <3 acres.	Repair/maintenance of existing, currently serviceable, authorized fills, with an expansion or a change in use ≥3 acres. Replacement of non serviceable authorized fills, ≥3 acres.
(e) MISC.	Oil spill clean-up discharges. Fish and wildlife harvesting such as duck blinds. Scientific measurement devices and survey activities, e.g., exploratory drilling, surveying, sampling. Doesn't include oil/gas exploration and fills for roads or construction pads. Includes monitoring wells.		

II. TIDAL/ NAVIGABLE WATERS	**Tidal/Navigable Waters of the U.S.:** Waters that are subject to the ebb and flow of the tide (Section 10 Rivers & Harbors Act of 1899) (33 CFR 329) and *structures and dredging* in the Federally-designated navigable waters, which are regulated below in Activities (b), (c), (d), (e) and (f). (*Fill* in the Federally-designated navigable waters is regulated in I. Inland Waters and Wetlands above). The Federally-designated navigable waters are the Merrimack River from the MA-NH State line to Concord, NH; Lake Umbagog within NH; and the Connecticut River from the MA-NH State line to Pittsburg, NH. The jurisdictional limits for this section, II. Tidal/Navigable Waters, are the mean high water (MHW) line in tidal waters and the OHW mark in non-tidal portions of the Federally designated navigable waters. For the purposes of this PGP, fill placed between MHW and the high tide line (HTL) and in the bordering and contiguous wetlands[1] to tidal waters are reviewed in this Tidal/Navigable Waters section.		
	Projects not meeting the Minimum Project criteria must apply/report to the Corps as either a Minor/Major Project or Individual Permit project. All Minimum or Minor/Major projects must comply with all of this PGP's applicable terms (Pages 1-7) and General Conditions (Pages 8-17).		
	MINIMUM PROJECTS [2]	**MINOR & MAJOR PROJECTS**	**INDIVIDUAL PERMIT (IP)**
(a) FILL	No new or previously unauthorized fills, 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 Minor/Major or Individual Permit authorization.	≤1 acre waterway fill and secondary waterway impacts (e.g., areas drained, flooded, cleared, or fragmented). Fill area includes all temporary and permanent waterway fills. Excludes work in SAS[6] and shellfish beds[11]. Specific activities with impacts of any area required to effect 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. Projects with proactive restoration[9] (SAS[6], anadromous fish runs, shellfish beds[11], etc.) as a primary purpose with impacts of any size.	>1 acre waterway fill and secondary waterway impacts (e.g., areas drained, flooded, cleared or fragmented). Fill area includes all temporary and permanent waterway fills. Temporary or permanent fill and/or excavation in SAS[6] or shellfish beds[11]. EIS required by the Corps.
(b) REPAIR AND MAINT. WORK	Repair or maintenance of existing, currently serviceable, authorized structures and fills. <u>Provided:</u> 1. Repair, replacement in-kind, or maintenance of existing, currently serviceable, authorized structures or fills: •Conditions of the original authorization apply. • No substantial expansion or change in use. •Must be rebuilt in same footprint, however minor deviations in structure design allowed. •The repair, rehabilitation, or replacement of those 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. Minor deviations for work involving piles shall adhere	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 <1 acre. Repair/maintenance of currently serviceable authorized structures w/expansion where the structure (existing + expansion) qualifies as a Minor/Major [see (e) below]. Replacement of non-serviceable authorized structures w/expansion where the structure (existing + expansion) qualifies as a Minor/Major [see (e) below].	Repair/maintenance of currently service-able 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 service-able, authorized structures w/expansion where the structure (existing + expansion) qualifies for an IP [see (e) below]. Replacement of non-serviceable, authorized structures where the structure (existing + expansion, if any) qualifies for an Individual Permit [see (e) below].

	to one of the 4 methods in (i)–(iv) below: i. Piles installed in-the-dry during low water or in-water between Nov. 8th - Apr. 9th, or ii. Must be drilled and pinned to ledge, or iii. Vibratory hammers used to install any size and quantity of wood, concrete or steel piles, or iv. Impact hammers limited to one hammer and <50 piles installed/day with the following: wood piles of any size, concrete piles ≤18-inches diameter, steel piles <12-inches diameter if the hammer is ≤3000 lbs and a wood cushion is used between the hammer and steel pile. For (ii) – (iv) above: i. In-water noise levels shall not exceed >187dB SEL re 1μPa or 206dB peak re 1μPa at a distance >10m from the pile being installed., and ii. In-water noise levels >155dB peak re 1μPa shall not exceed 12 consecutive hours on any given day and a 12 hour recovery period (i.e., in-water noise below 155dB peak re 1μPa) must be provided between work days.		

(c) DREDGING	For waters that are subject to the ebb and flow of the tide, maintenance dredging13 for navigational purposes ≤3,000 SF with upland disposal. Includes return water from upland contained disposal area. Provided: • **Mechanical dredging only*** • Dredging & disposal operation limited to Nov 15 – Mar 15. • No impacts to SAS6 or shellfish beds. • No dredging in intertidal areas. • Proper siltation controls are used. For Federally-designated navigable waters (see definition of Tidal/Navigable Waters of the U.S. above), maintenance dredging13 ≤3,000 SF with upland disposal. Includes return water from upland contained disposal area. **the use of an environmental bucket for mechanical dredging is recommended by NMFS*	For waters that are subject to the ebb & flow of the tide, maintenance dredging[13] >3,000 SF or new dredging[13] <20,000 SF (may be mechanical or hydraulic dredging). Provided: • Dredging & disposal operation limited to Nov 15-Mar15. • No impacts to SAS[6] or shellfish beds[11]. • Disposal includes: 1.upland; 2.beach nourishment of any size provided the primary purpose of the dredging is navigation; or 3.open water & confined aquatic disposal, if Corps, in consultation with Federal and State agencies, finds the material suitable. For Federally-designated navigable waters (see def. of Tidal/ Navigable Waters of the U.S. above), maintenance[12] dredging of any area >3,000 SF or new dredging[12] of any area. Includes return water from upland contained disposal area. Projects with proactive restoration[9] (SAS[6], shellfish beds[11], anadromous fish run, etc.) as a primary purpose with impacts of any size. Specific activities with impacts of any area or cubic yardage required affecting 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 Minor/Major project. Wetlands must be restored in place. All SAS[6] and shellfish beds[11] within the project area shall be delineated.	New dredging[13] ≥20,000 SF Dredging for non-navigational purposes (sand mining). E.g., the primary purpose of obtaining the sand is for beach nourishment or upland use.
(d) MOORINGS	Private, non-commercial, non-rental, single-boat moorings. Provided: • Proper/eco-friendly moorings are used so chains or other connections do not rest on the bottom in vegetated shallows[15]. • Authorized by the local harbormaster. • Not associated with a boating facility[14]. • Moorings in Federal Anchorage[12] not associated with a boating facility[14]. • Not located within the buffer zone of the horizontal limits of a Federal Channel[12]. • No interference with navigation.	Moorings not meeting the terms of a Minimum project. 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 Channel[12].	Moorings and/or their moored vessels within the horizontal limits of a Federal Channel[12].

(e) PILE-SUPPORTED STRUCTURES AND FLOATS	No allowances for new pile-supported structures and floats.	All SAS[6] and shellfish beds[11] within the project area shall be delineated. Recommendations for private structures and floats: • Bottom-anchored floats ≤400 SF • Pile-supported structures for navigational access to the waterway ≤400 SF with attached floats ≤150 SF. • Pile-supported structures are ≤6' wide and have at least a 1:1 height: width ratio[16]. • Float stops, chains, or other devices must be used to provide ≥ 2.5-foot clearance between the bottom of the float and the substrate during all tides. • Pile-supported structures & floats are not located within 25' of vegetated shallows[15] and moored vessels are not positioned over SAS[6]. • Structures 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 FNP[12].	Structures or floats located such that they and/or vessels docked at them are within the horizontal limits of an FNP[12]. Structures or floats associated with a new or previously unauthorized boating facility.[14]
(f) FISH & WILDLIFE HARVEST/ AQUA-CULTURE	Aquaculture projects that don't exceed 1,000 SF in area, aren't located in SAS[6] or intertidal areas, culture only indigenous species, 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 3 FT between the top of the gear and the elevation of MLW in areas where the elevation of the sea floor is above Elevation – 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 Elevation –15 FT MLW, and have been reviewed and approved in writing by the NH DES. Aquaculture projects that qualify under a Minimum impact permit shall provide to the Corps: 1) a copy of their NH State application and NH Fish and Game license including geographic coordinates of the facility boundary in degree, minute, second format (DDD,MM,SS.SSSS) 2) Documentation that the applicant has coordinated with the US Coast Guard specifically regarding USCG Private Aids to Navigation standards 3) Documentation that they contacted their local harbormaster and/or NH Port Authority authorization for the facility	Aquaculture projects that do not meet the terms of a Minimum Impact project	EIS required by the Corps.

	In the case of proposed aquaculture operations occupying bottom substrate (Section 404) the Army Corps of Engineers and/or the N.H. Dept of Environmental Services may require additional authorization. The Army Corps of Engineers can utilize the PGP to confirm authorization to aquaculture projects having a NH Fish & Game license in Section 10 waters. Fish and wildlife harvesting devices and activities such as pound nets, crab traps, crab dredging, eel pots, lobster traps, duck blinds, clam and oyster digging, shellfish seeding, and small fish attraction devices such as open water fish concentrators (sea kites, etc.). Provided there is no hazard to navigation and no sites that support submerged aquatic vegetation. 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		

	MINIMUM PROJECTS [2]	**MINOR & MAJOR PROJECTS**	**IP**
(g) MISC.	Activities not regulated by the DES Wetlands Bureau, formerly authorized under the Nationwide Permit Program and listed in Appendix A of this document. Temporary oil spill cleanup structures and fill. Temporary buoys, markers, floats, etc. for recreational use during specific events, provided: • They are in place for no more than 30 days and are removed within 15 days after use is discontinued. • Proper/eco-friendly moorings must be used so chains or other connections don't rest on the bottom for buoys, floats and vessels located over vegetated shallows15 • Float stops, chains, or other devices must be used to provide ≥2.5-foot clearance between the bottom of the float and the substrate during all tides Temporary buoys, markers, floats, etc. for recreational use during specific events at Corps reservoirs. The reservoir manager must approve each buoy or marker individually. 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	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. Water-Based Renewable Energy Generation Pilot Projects: Structures and work in Navigable waters of the U.S. and discharges of dredged or fill material into waters of the U.S. for the construction, expansion, modification, or removal of water-based wind or hydrokinetic renewable energy generation pilot projects and their attendant features. Attendant features may include, but are not limited to, land-based collection and distribution facilities, control facilities, roads, parking lots, and stormwater management facilities. For the purposes of this PGP, the term "pilot project" means an experimental project where the renewable energy generation units will be monitored to collect information on their performance and environmental effects at the project site.	EIS required by the Corps.

	CFR 66, Chapter I, subchapter C). Structures, buoys, floats and other devices placed within anchorage or fleeting areas to facilitate moorage of vessels where such areas have been established for that purpose by the U.S. Coast Guard, provided: • Placement in the area is away from vegetated shallows • If the above isn't possible, proper/eco-friendly moorings are used so chains or other connections don't rest on the bottom in veg. shallows15. • Float stops, chains, or other devices must be used to provide ≥2.5-foot clearance between the bottom of the float and the substrate during all tides Scientific measurement devices, and small weirs and flumes constructed primarily to record water quantity and velocity provided the discharge of fill is limited to 10 cubic yards. No work may restrict movement of aquatic species or potentially threaten to impact or entangle sea turtles or marine mammals in near-coastal waters. Survey activities including core sampling, seismic exploratory operations, plugging of seismic shot holes, other exploratory-type bore holes and oil and gas test wells, soil survey and sampling, and historic resources surveys. Discharges and structures associated with the recovery of historic resources are not authorized. Drilling and the discharge of excavated material from test wells for oil and gas exploration are not authorized. Fill placed for roads, pads and other similar activities is not authorized, nor is any permanent structure.		

End Notes/Definitions

[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 DES or NHCP must regulate an activity for it to be eligible for authorization as a Minimum Impact Project of this NH PGP. The Minimum Impact Project category does not apply to activities exempt from State regulation. These activities must report to the Corps.

[3] **Direct, Secondary (Indirect), and Cumulative Impacts:**

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

Secondary (Indirect) 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. (40 CFR 230.11 (h)). Secondary impacts are those impacts outside the footprint of the fill (e.g., beyond the bounds of the disposal site) that arise from and are associated with the direct discharge of dredged or fill material. Some examples are: I) Habitat Fragmentation. This occurs when a relatively undisturbed habitat block is interrupted or broken apart by roads, ditches, disturbance of vegetation, or development of structures. II) Interruption of Travel Corridors. Travel corridors are routes that many species travel on to find food, mates, shelter, and cover. Many aquatic species follow stream channels and wetlands, and follow established routes season after season. III) Vernal Pools. These are critically important breeding habitats for amphibians. Many amphibians disperse several hundred feet from their breeding ponds into the adjacent upland habitat after the breeding season has ended. IV)

Hydrology, hydrological functions and non-point source impacts: A) Interference with the migration or movement of fish and shellfish from one area to another, such as placement of a dam eliminating access to spawning grounds for anadromous fish. B) Greater amounts of sediment, nutrients, and other pollutants such as lead, oil, gas, and salt that could impact wetlands and streams. Sediment causes turbidity, which reduces aquatic life and usually transports pesticides, heavy metals and other toxins into streams. This is especially a concern in watersheds where the streams are already listed as impaired by NHDES. C) Submerged aquatic vegetation is very dependent on light transmission and small changes in ambient turbidity can preclude it from growing in certain areas. D) Trout spawning areas are selected in areas that are well flushed and aerated, and new amounts of deposition may result in a spawning area being eliminated due to siltation of fish eggs. E) Physical effects such as erosion, accretion, entrenchment, sedimentation, embedment, channel or shoreline migration and failure to pass bedload material, organic matter and large woody debris.

Cumulative Impacts: The extent of past, present, and foreseeable developments in the area may be an important consideration in evaluating the significance of a particular project's impacts. Although the impacts associated with a particular discharge may be minor, the cumulative effect of numerous similar discharges can result in a large impact. Cumulative impacts should be estimated only to the extent that they are reasonable and practical.

[4] **Incidental Fallback:** The term "discharge of dredged or fill material" also includes certain discharges resulting from excavation.

[5] **Water Diversions:** Water diversions are activities such as bypass pumping or water withdrawals. Temporary flume pipes, culverts or cofferdams where normal flows are maintained within the stream boundary's confines aren't water diversions. "Normal flows" are defined as no change in flow from pre-project conditions. See GC 21.

[6] **Special Aquatic Sites:** These include both inland & salt marsh wetlands, mud flats, vegetated shallows[15], coral reefs, and riffle & pool complexes. (40 CFR 230).

[7] **Special Wetlands:** These include 1. enriched/calcareous seepage swamps, estuarine wetlands, floodplains, peatlands, unique basin swamps/marshes, and vernal pools, 2. all wetlands that provide habitat for threatened or endangered species, and 3. all exemplary wetland natural community occurrences as designated by the NH Natural Heritage Bureau (NHNHB). The wetland types provided in 1 above are expanded below and fully described in Natural Community Systems of New Hampshire and Natural Communities of New Hampshire, which are available at www.nhnaturalheritage.org. Note: The Corps will use the definition of vernal pools that is listed below, not the definition in the referenced Natural Heritage documents. The applicant is required to have NHNHB check the wetland types listed in 2 and 3 above by either requesting a hard copy review or using the DataCheck Tool at www.nhnaturalheritage.org.

Vernal Pool (VP) and Habitat: VPs are confined basin depressions with water for two or more continuous months in the spring and/or summer, for which evidence of one or 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 VP edge) and seasonal pool terrestrial habitat (750 FT radius from the VP edge). The Corps will determine on a case-by-case basis which vernal pools are within their jurisdiction.

Enriched/Calcareous seepage swamps: Wetlands characterized by the discharge of enriched groundwater. Floristic composition is an indicator of these conditions.

- Calcareous sloping fen system
- Circumneutral seepage swamp (natural community)
- Circumneutral hardwood forest seep (natural community)
- Calcareous riverside seep (natural community)
- Red maple-black ash-swamp saxifrage swamp (natural community)
- Northern hardwood-black ash-conifer swamp (natural community)

Estuarine wetlands: Wetland communities occurring in subtidal and intertidal coastal habitats connected to the ocean but semi-enclosed by land and protected from high-energy wave action. These wetlands are periodically exposed and flooded by tides.

- Salt marsh system
- Brackish tidal riverbank marsh system
- Sparsely vegetated intertidal system
- Subtidal system

Floodplains: Areas of low land along a watercourse that are subject to periodic flooding and sediment deposition.

- Montane/near boreal floodplain system
- Major river silver maple floodplain system
- Temperate minor river floodplain system
- Swamp white oak floodplain forest (natural community)

Peatlands: Peat-accumulating wetlands, including bogs, fens, cedar swamps, which are often dominated with sphagnum moss, heath family plants and sedges.

- Alpine/subalpine bog system
- Kettle hole bog system
- Poor level fen/bog system
- Medium level fen system
- Montane sloping fen system
- Patterned fen system
- Calcareous sloping fen system
- Black spruce peat swamp system
- Coastal conifer peat swamp system
- Temperate peat swamp system
- Near-boreal minerotrophic peat swamp system

Unique basin swamps/marshes: Closed wetland basins with no inlet or outlet and broadly fluctuating water levels that contain unique plant species composition. This includes both swamps and sand plain marshes.

- Sandy pond shore system
- Sand plain basin marsh system
- Swamp white-oak basin swamp (natural community)
- Red maple-black gum basin swamp (natural community)

[8] **Corps Properties & Easements:** Contact the Corps, Real Estate Division (978) 318-8580 to initiate reviews about both Corps holdings and permit requirements.
[9] **Restoration:** The manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural/historic functions to a waterway, 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. The Corps will decide if a project qualifies as proactive restoration and must determine in consultation with Federal and State agencies that the net effects are beneficial.
[10] **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, which are necessary to make repair, rehabilitation, or replacement, are permitted, provided the adverse environmental effects resulting from such repair, rehabilitation, or replacement are minimal. Currently serviceable means useable as is or with some maintenance, but not so degraded as to essentially require reconstruction.
[11] **Shellfish Beds:** Shellfish beds (open or closed) used for recreation harvest as designated by the NH Fish and Game Department. Maps of these shellfish beds are located at: www.nae.usace.army.mil/reg/NHFGRecreatonHarvestShellfishBeds.pdf.
[12] **Federal Navigation Projects (FNPs):** FNPs are comprised of Federal channels and Federal anchorages. See Appendix D for a list of FNPs. Contact the Corps for specific locations 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 dredged and authorized by the Corps. Proof of authorization is required. **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.
[14] **Boating Facilities:** Facilities that provide, rent or sell mooring space, e.g., marinas, yacht clubs, boat yards, dockominiums.
[15] **Vegetated Shallows:** Subtidal areas that support rooted aquatic vegetation such as eelgrass (*Zostera marina*) and widgeon grass (*Ruppia maritima*). (Does not include salt marsh.)
[16] **Height: Width Ratio:** The height of structures shall at all points be equal to or exceed the width of the deck. For the purpose of this definition, height shall be measured from the marsh substrate to the bottom of the longitudinal support beam.
[17] **Historic Resources:** including but not limited to archaeological sites or deposits, structures such as dams, abutments, piers, buildings, landscapes, traditional cultural properties, etc.

US Army Corps of Engineers®
New England District

Programmatic General Permit (PGP)
Appendix B - Required Information and Corps Secondary Impacts Checklist

In order for the Corps of Engineers to properly evaluate your application, applicants must submit the following information along with the DES Wetlands Bureau application or permit notification forms. Some projects may require more information. For a more comprehensive checklist, go to www.nae.usace.army.mil/regulatory, "Forms/Publications" and then "Application and Plan Guideline Checklist." Check with the Corps at (978) 318-8832 for project-specific requirements. For your convenience, this Appendix B is also attached to the State of New Hampshire DES Wetlands Bureau application and Permit by Notification forms.

All Projects:

- Corps application form (ENG Form 4345) as appropriate.
- Photographs of wetland/waterway to be impacted.
- Purpose of the project.
- Legible, reproducible black and white (no color) plans no larger than 11"x17" with bar scale. Provide locus map and plan views of the entire property.
- Typical cross-section views of all wetland and waterway fill areas and wetland replication areas.
- In navigable waters, show mean low water (MLW) and mean high water (MHW) elevations. Show the high tide line (HTL) elevations when fill is involved. In other waters, show ordinary high water (OHW) elevation.
- On each plan, show the following for the project:
- Vertical datum and the NAVD 1988 equivalent with the vertical units as U.S. feet. Don't use local datum. In coastal waters this may be mean higher high water (MHHW), mean high water (MHW), mean low water (MLW), mean low lower water (MLLW) or other tidal datum with the vertical units as U.S. feet. MLLW and MHHW are preferred. Provide the correction factor detailing how the vertical datum (e.g., MLLW) was derived using the latest National Tidal Datum Epoch for that area, typically 1983-2001.
- Horizontal state plane coordinates in U.S. survey feet based on the [insert state grid system] for the [insert state] [insert zone] NAD 83.
- Show project limits with existing and proposed conditions.
- Limits of any Federal Navigation Project in the vicinity of the project area and horizontal State Plane Coordinates in U.S. survey feet for the limits of the proposed work closest to the Federal Navigation Project;
- Volume, type, and source of fill material to be discharged into waters and wetlands, including the area(s) (in square feet or acres) of fill in wetlands, below the ordinary high water in inland waters and below the high tide line in coastal waters.
- Delineation of all waterways and wetlands on the project site, including vernal pools:
- Use Federal delineation methods and include Corps wetland delineation data sheets. See GC 2; Endnotes 1, 6, 7 and 15 in Appendix A; and www.nero.noaa.gov/hcd for eelgrass survey guidance.
- Appendix A, (e) Moorings, contains eelgrass survey requirements for the placement of moorings.
- For activities involving discharges of dredged or fill material into waters of the U.S., include a statement describing how impacts to waters of the U.S. are to be avoided and minimized, and either a statement describing how impacts to waters of the U.S. are to be compensated for (or a conceptual or detailed mitigation plan) or a statement explaining why compensatory mitigation should not be required for the proposed impacts. Please contact the Corps for guidance.

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New England District

New Hampshire Programmatic General Permit (PGP)
Appendix B - Corps Secondary Impacts Checklist
(for inland wetland/waterway fill projects in New Hampshire)

1. Attach any explanations to this checklist. Lack of information could delay a Corps permit determination.
2. All references to "work" include all work associated with the project construction and operation. Work includes filling, clearing, flooding, draining, excavation, dozing, stumping, etc.
3. See PGP, GC 5, regarding single and complete projects.
4. Contact the Corps at (978) 318-8832 with any questions.

1. Impaired Waters	Yes	No
1.1 Will any work occur within 1 mile upstream in the watershed of an impaired water? See http://des.nh.gov/organization/divisions/water/wmb/section401/impaired_waters.htm to determine if there is an impaired water in the vicinity of your work area.*		
2. Wetlands	Yes	No
2.1 Are there are streams, brooks, rivers, ponds, or lakes within 200 feet of any proposed work?		
2.2 Are there proposed impacts to SAS, shellfish beds, special wetlands and vernal pools (see PGP, GC 26 and Appendix A)? Applicants may obtain information from the NH Department of Resources and Economic Development Natural Heritage Bureau (NHB) website, www.nhnaturalheritage.org, specifically the book Natural Community Systems of New Hampshire.		
2.3 If wetland crossings are proposed, are they adequately designed to maintain hydrology, sediment transport & wildlife passage?		
2.4 Would the project remove part or all of a riparian buffer? (Riparian buffers are lands adjacent to streams where vegetation is strongly influenced by the presence of water. They are often thin lines of vegetation containing native grasses, flowers, shrubs and/or trees that line the stream banks. They are also called vegetated buffer zones.)		
2.5 The overall project site is more than 40 acres.		
2.6 What is the size of the existing impervious surface area?		
2.7 What is the size of the proposed impervious surface area?		
2.8 What is the % of the impervious area (new and existing) to the overall project site?		
3. Wildlife	Yes	No
3.1 Has the NHB determined that there are known occurrences of rare species, exemplary natural communities, Federal and State threatened and endangered species and habitat, in the vicinity of the proposed project? (All projects require a NHB determination.)		
3.2 Would work occur in any area identified as either "Highest Ranked Habitat in N.H." or "Highest Ranked Habitat in Ecological Region"? (These areas are colored magenta and green, respectively, on NH Fish and Game's map, "2010 Highest Ranked Wildlife Habitat by Ecological Condition.") Map information can be found at: • PDF: www.wildlife.state.nh.us/Wildlife/Wildlife_Plan/highest_ranking_habitat.htm. • Data Mapper: www.granit.unh.edu. • GIS: www.granit.unh.edu/data/downloadfreedata/category/databycategory.html.		

3.3 Would the project impact more than 20 acres of an undeveloped land block (upland, wetland/waterway) on the entire project site and/or on an adjoining property(s)?		
3.4 Does the project propose more than a 10-lot residential subdivision, or a commercial or industrial development?		
3.5 Are stream crossings designed in accordance with the PGP, GC 21?		
4. Flooding/Floodplain Values	Yes	No
4.1 Is the proposed project within the 100-year floodplain of an adjacent river or stream?		
4.2 If 4.1 is yes, will compensatory flood storage be provided if the project results in a loss of flood storage?		
5. Historic/Archaeological Resources		
For a minor or major impact project - a copy of the Request for Project Review (RPR) Form (www.nh.gov/nhdhr/review) shall be sent to the NH Division of Historical Resources as required on Page 5 of the PGP**		

*Although this checklist utilizes state information, its submittal to the Corps is a Federal requirement.
** If project is not within Federal jurisdiction, coordination with NH DHR is not required under Federal law..
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APPENDIX C - EFH RIVERS FOR ATLANTIC SALMON (See General Condition 10)

CONNECTICUT RIVER AND TRIBUTARIES

Ames Brook
Ammonoosuc River
Arlin Brook
Ash Swamp Brook
Ashuelot River
Beaver Brook
Beaver Brook
Beaver Brook
Bendell Brook
Benware Brook
Bill Little Brook
Bloods Brook
Burton Brook
Carpenters Brook
Carter Brook
Clark Brook
Cobb Brook
Cold River
Coleman Brook
Cone Brook
Conmary Brook
Cow Brook
Dyer Brook
Eastman Brook
Governors Brook
Grant Brook
Great Brook
Gulf, The
Gully Brook
Hackett Brook
Hewes Brook
Hubbard Brook
Hunt Mountain Brook
Israel River
Johns River
Kimball Brook
Liscomb Brook
Little Sugar River
Lyman Brook
Mascoma River
Mill Brook
Mink Brook
Mohawk River
Moore Brook
Oliverian Brook
Ox Brook
Partridge Brook
Petes Brook
Potter Brook
Roaring Brook
Roaring Brook
Roaring Brook
Scarritt Brook
Simms Stream
Slade Brook
Smarts Mill Brook
Smith Brook
Sprague Brook
Sugar River
Sweatt Brook
Upper Ammonoosuc River
Walker Brook

MERRIMACK RIVER AND TRIBUTARIES

Allen Brook
Baker Brook
Bennett Brook
Bow Bog Brook
Bow Brook
Bowman Brook
Bradleys Island
Brickyard Brook
Browns Brook
Bryant Brook
Burnham Brook
Cate Brook
Chandler Brook
Chase Brook
Cohas Brook
Cold Brook
Contoocook River
Cross Brook
Dalton Brook
Giles Pond - Salmon Brook
Glines Brook
Hayward Brook
Horseshoe Island
Horseshoe Pond - Naticook Brook
Knox Brook
Little Cohas Brook
Messer Brook
Millstone Brook
Nashua River
Needle Shop Brook
Nesenkeag Brook
Pemigewasset River
Penacook Lake
Piscataquog River
Pointer Club Brook
Punch Brook
Ray Brook
Riddle Brook
Sawmill Brook
Second Brook
Shaw Brook
Soucook River
Souhegan River
South Branch River
Stirrup Iron Brook
Suncook River
Tannery Brook
Turkey River
Watts Brook
Weeks Brook
Winnipesaukee River
Woods Brook

ANDROSCOGGIN RIVER AND TRIBUTARIES

Austin Mill Brook
Bean Brook
Bear Brook
Bog Brook
Cascade Alpine Brook
Chickwolnepy Stream
Clear Stream
Clement Brook
Conner Brook
Dead River
East Brook
Gates Brook
Goose Pond
Horne Brook
Island Brook
Josh Brook
Kidder Brook
Leadmine Brook
Leavitt Stream
Mollidgewock Brook
Moose Brook
Moose Pond
Moose River
Munn Pond
Pea Brook
Peabody Brook
Perkins Brook
Rattle River
Sessions Brook
Smoky Camp Brook
Stearns Brook
Stony Brook
Tinker Brook
Umbagog Lake

SACO RIVER AND TRIBUTARIES

Albany Brook
Artist Brook
Avalanche Brook
Barlett Brook
Bearcamp River
Beech River
Bemis Brook
Conway Lake
Davis Brook
E.Branch Saco River
Echo Lake
Ellis River
Flume Cascade
Kearsarge Brook
Kendron Brook
Lucy Brook
Mason Brook
Meadow Brook
Mountain Brook
Nancy Brook
Ossipee River
Razor Brook
Rocky Branch
Sawyer River
Sleeper Brook
Swift River
Willey Brook

COCHECO RIVER

LAMPREY RIVER

Note: Rivers and Tributaries that are bolded are specifically included as rivers that are contained in various State and Federal anadromous fish restoration programs and should be the primary focus for Atlantic salmon protections.