

Application No.: 200300120
Applicant: General Public in the
Commonwealth of Massachusetts

Effective Date: January 11, 2005
Expiration Date: January 11, 2010

DEPARTMENT OF THE ARMY
DRAFT PROGRAMMATIC GENERAL PERMIT DRAFT
COMMONWEALTH OF MASSACHUSETTS

The New England District of the U.S. Army Corps of Engineers (Corps) hereby modifies the previously issued Programmatic General Permit (PGP). The PGP expedites review of minimal impact work in coastal and inland waters and wetlands within the Commonwealth of Massachusetts.

I. GENERAL CRITERIA:

Activities with minimal impacts, as specified by the terms and conditions of this PGP and on the attached Definition of Categories, are either:

Category 1: Non-reporting. Eligible without screening (provided required local and State permits and required State certifications are received), or

Category 2: Reporting. Require screening and a written determination of eligibility under the general permit by the Corps after coordination with the U.S. Fish and Wildlife Service, U.S. Environmental Protection Agency and National Marine Fisheries Service, and the Massachusetts Coastal Zone Management (CZM) Office.

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

II. ACTIVITIES COVERED:

Work and structures that are located in, or that affect, navigable waters of the United States (regulated by the Corps under Section 10 of the Rivers and Harbors Act of 1899); the discharge of dredged or fill material into waters of the United States (regulated by the Corps under Section 404 of the Clean Water Act); 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).

III. PROCEDURES

A. State and Local Approvals

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

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

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

(c) **Water Quality Certification** is required for work in Corps jurisdiction involving a discharge of dredged or fill materials to waters of the U.S. Some projects require an individual Water Quality Certification (WQC), under Section 401 of the Clean Water Act, issued by the Massachusetts DEP before work can proceed (see Page 6 for 401 WQC requirements).

(d) **Coastal Zone Management:** Any project that meets the terms and conditions of Category 1 of this PGP (i.e., non-reporting), has been determined to be consistent with the Massachusetts Coastal Zone Management (CZM) plan and does not require any additional CZM review. For work being screened under Category 2 of this PGP, the Corps will coordinate screening of any work in or affecting the coastal zone with the Office of Coastal Zone Management; for these projects the Corps will notify applicants if an individual CZM concurrence is required.

B. Corps Authorizations

CATEGORY 1 (Non-Reporting)

Eligibility

Activities in Massachusetts that:

- Are subject to Corps jurisdiction (see Condition 2, Page 9), and
- Meet the definition of Category 1 in Appendix A - Definition of Categories, and
- Meet the conditions of the PGP listed on Pages 9 - 16

may proceed without application or notification to the Corps provided the required Federal, State, and local authorizations are obtained.

Project proponents seeking Category 1 authorizations are not relieved of the obligation to comply with this PGP's general conditions (see Page 9) 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 outside experts such as the Massachusetts Historical Commission and the appropriate Indian tribes is recommended when there is a high likelihood of the presence of resources of concern.

Although Category 1 projects are non-reporting, the Corps reserves the right to require an Individual Permit review if there are concerns for the aquatic environment or any other factor of the public interest (see Condition 4 on Discretionary Authority, Page 9).

Work that is not subject to the State's WPA, but is subject to Corps jurisdiction, is eligible for Corps authorization under this PGP. Although an Order of Conditions is not required if the work is not subject to the WPA, this PGP's review thresholds and requirements concerning WQC and CZM consistency apply. Such projects could include activities that are exempt from the WPA or activities in Federal wetlands that are not included in the WPA.

CATEGORY 2 (Reporting – Requiring Screening)

Eligibility Criteria

Activities in Massachusetts that are:

- Subject to Corps jurisdiction, and
- Meet the definition of Category 2 in Appendix A - Definition of Categories, and
- Meet the conditions of the PGP listed on Pages 9 - 16,

Require written approval from the Corps. These projects will be reviewed through interagency screening (see Federal Screening Procedures below) to determine whether such activities may be authorized under this PGP. To be eligible and subsequently authorized, an activity must result in minimal impacts to the aquatic environment as determined by the Corps based on comments from the review team and the criteria listed above. Mitigation may be required to compensate for unavoidable impacts to ensure net effects of a project are minimal.

For Category 2 projects, applicants must obtain not only a written authorization from the Corps, but an Order of Conditions and certifications or waivers concerning WQC and CZM, as stated on Page 1. Applicants shall apply directly to the appropriate local Conservation Commission and/or DEP regional office (see Page 16 for addresses) for local and State approvals.

Consultation with the Corps and outside experts is required to ensure compliance with all of this PGP's conditions, such as consultation with the Massachusetts Historical Commission and the appropriate Native American Indian tribes to ensure compliance with Condition 7. Also, note that the review thresholds under Category 2 apply to single and complete projects only (see Condition 5).

Application Procedures

Applicants must apply directly to the Corps for all Category 2 projects using ENG Form 4345. Alternatively, the Corps will accept DEP's WQC and Chapter 91 application forms for its review provided the forms were already sent to the DEP. Applicants must use a Corps application form for all projects involving work that is not subject to State jurisdiction. Upon receipt of the application, the Corps will determine if it:

- (1) requires additional information (see "information typically required" below);
- (2) is appropriate for screening with the Federal resource agencies (see Category 2 Federal Screening Procedures below);
- (3) is ineligible under the terms and/or conditions of this PGP; or
- (4) will require Individual Permit review, regardless of whether the terms and conditions of this PGP are met, based on concerns for the aquatic environment or any other factor of the public interest (see Condition 4 on Discretionary Authority).

If open water disposal is proposed, the Corps will make a suitability determination, fully coordinated with the Federal resource agencies, before coordinating a project at a joint processing meeting.

All Category 2 applicants shall submit a copy of their Corps, WQC or Chapter 91 application materials, or DEP's Environmental Notification Form, to the State Historic Preservation Officer at the Massachusetts Historical Commission (MHC) and the Wampanoag Tribal Historic Preservation Officer, the Stockbridge-Munsee and/or the Narragansett Tribal Historic Preservation Officers when applicable (see Page 17 for geographic areas of concern) to be reviewed for the presence of historic,

archaeological, or tribal resources in the permit area that the proposed work may affect. Submittals to the Corps shall include information to indicate that this has been done (a copy of the applicant's cover letter to MHC and tribes, the DEP Environmental Notification Form's distribution list, or a copy of MHC and tribal response letters when applicable).

Information Typically Required

The following information may not be necessary for all projects. Please see www.nae.usace.army.mil for a more comprehensive checklist. Select "Regulatory/Permitting," "Forms" and then "Application and Plan Guideline Checklist." Please check with our office for project-specific requirements.

Information typically required:

- (a) purpose of the project;
- (b) 8½"x11" locus map. 8½"x11" plan views of the entire property and project limits with existing and proposed conditions;
- (c) typical cross-section views of all wetland and waterway fill areas and wetland replication areas;
- (d) legible, reproducible plans. On each plan show the NGVD 1929 equivalent for the project's vertical datum (MLW, MLLW or NGVD for tidal projects) with the vertical units. Don't use local datum.
- (e) wetland delineation for site, Corps wetland delineation data sheets (see web site) and calculations of waterway and wetland impact areas (see Condition 2);
- (f) delineation of submerged aquatic vegetation, e.g., eelgrass beds, in tidal waters;
- (g) volume, type, and source of fill material to be discharged into waters and wetlands, including the areas (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;
- (h) mean low water, mean high water and high tide elevations in navigable waters;
- (i) limits of any Federal Navigation Project in the vicinity of the project area and State Plane Coordinates for the limits of the proposed work closest to the Federal Navigation Project;
- (j) alternatives analysis submitted to the DEP for WQC review, and/or additional information compiled on alternatives;
- (k) identify and describe potential impacts to essential fish habitat (see Condition 10);
- (l) photographs of wetland/waterway to be impacted.

Information typically required for dredging projects:

- (a) sediment testing, including physical, chemical and biological testing. For projects proposing open water disposal, applicants are encouraged to contact the Corps as early as possible regarding sampling and testing protocols. Sampling and testing of sediments without such contact should not occur and if done, would be at the applicant's risk.
- (b) the volume of material and area in square feet to be dredged below mean high water;
- (c) existing and proposed water depths;
- (d) type of dredging equipment to be used;
- (e) nature of material (e.g. silty sand);
- (f) any existing sediment grain size and bulk sediment chemistry data for the proposed or any nearby projects;
- (g) information on the location and nature of municipal or industrial discharges and occurrence of any contaminant spills in or near the project area, location of the disposal site (include locus sheet);
- (h) shellfish survey;
- (i) identify and describe potential impacts to essential fish habitat (see Condition 10);
- (j) delineation of submerged aquatic vegetation, e.g., eelgrass beds;

Federal Screening Procedures

The Corps will review all complete applications for Category 2 projects at interagency screening meetings (or “joint processing” meetings) with the Federal resource agencies (U.S. Fish & Wildlife Service, U.S. Environmental Protection Agency and National Marine Fisheries Service) to determine whether such activities may be authorized under this PGP. The Federal resource agencies will comprise the interagency review team. The Massachusetts CZM also attends the meetings and the Corps will notify applicants if an individual CZM consistency concurrence is required. Other State agency representatives frequently attend the meetings as advisors and for informal consultation purposes. The meetings are held at the Corps every three weeks, or coordinated as necessary to provide applicants with a timely response. The Corps and Federal resource agencies, at the branch chief or equivalent level, may agree on certain activities that do not need to be coordinated at these meetings.

If the Corps and Federal resource agencies determine that the activity is eligible for the PGP, the Corps will send an authorization letter directly to the applicant and a copy to the DEP regional office. If the activity is not eligible under the PGP or if the Corps determines that additional information is required, the Corps will notify the applicant in writing and will send a copy of this notification to DEP.

For projects reviewed with the Federal agencies, the agencies may recommend within ten business days special conditions for projects to avoid or minimize adverse environmental effects and to ensure the terms and conditions of the PGP are met. The Corps will determine that a project is ineligible under this PGP and will begin its Individual Permit review procedures if any one of the Federal agencies, within ten working days of the screening meeting, expresses a concern within their area of expertise, states the resource or species that could be impacted by the project, and describes the impacts that, either individually or cumulatively, will be more than minimal.

This 10-day notice may be verbal and is not required to be fully documented, but must be confirmed with a written response within an additional ten working days from the date of the verbal comment. Written responses must be signed by the Federal resource agency field supervisor or branch chief as appropriate and must identify the affected resource within their area of expertise. The intent of the verbal notification is to allow the Corps to give timely notification to the applicant that additional information is needed and/or an Individual Permit may be required. The Corps may reinstate a project’s eligibility under the PGP provided the Federal agencies’ concerns are satisfied. The Federal resource agencies may request additional information within their area of expertise within ten working days of the screening meeting. This information shall be commensurate to the level of impact and agreed upon by the Corps. The agencies are allowed an additional ten working days after their receipt of additional information to provide special conditions or a written Individual Permit request to the Corps.

Coastal Zone Management Screening Procedures

Category 2 projects that involve work in or affecting the coastal zone will be screened with CZM at the joint processing meeting or electronically if a CZM representative is not at the joint processing meeting. The CZM will make a determination, at joint processing or within 10 working days of receipt, that (1) CZM consistency may be waived; (2) CZM consistency may be waived provided CZM and the Corps agree to special conditions to protect the land or water uses or natural resources of the coastal zone; or (3) an individual CZM consistency concurrence will be required for the

project. If CZM requires an individual CZM consistency concurrence, the Corps may issue a conditional letter, which will notify the applicant that the Federal authorization is not valid until CZM consistency concurrence is issued or waived by the Office of Coastal Zone Management.

Minerals Management Service (MMS) Review

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 MMS, Outer Continental Shelf (OCS) Survey Group, pursuant to the Submerged Lands Act (43 USC. Section 13011315, 33 CFR 320.4(f)). The Corps will forward project information to MMS for their review. MMS will coordinate their determination with the Department of the Interior (DOI) Solicitor's Office. The DOI will have 15 calendar days from the date MMS is in receipt of the project information to determine if the baseline will be affected. No notification within the fifteen-day review period will constitute a "no effect" determination. Otherwise, the solicitor's notification to the Corps may be verbal but must be followed with a written confirmation within ten business days from the date of the verbal notification. This procedure will be eliminated if the Commonwealth of Massachusetts provides a written waiver of interest in any increase in submerged lands caused by a change in the baseline resulting from solid fill structures or fills authorized under this PGP.

401 Water Quality Certification

For work in Corps jurisdiction involving a discharge to waters of the U.S., an Individual 401 Water Quality Certification (WQC) must be obtained from or waived by the Massachusetts DEP before work can proceed as authorized by this PGP for the following circumstances (pursuant to MGL c. 21 Sections 26 - 53 and regulations at 314 CMR 9.00). The following are excerpted from the Massachusetts DEP regulations at 314 CMR 9.04: Activities Requiring an Application:

- (1) *More than 5000 SF.* Any activity in an area subject to 310 CMR 10.00 which is also subject to 33 USC 1251, et seq. and will result in the loss of more than 5000 SF cumulatively of bordering and isolated vegetated wetlands and land under water.
- (2) *Outstanding Resource Waters.* Any activity resulting in any discharge of dredged or fill material to any Outstanding Resource Water. See 314 CMR 4.00 Massachusetts Surface Water Quality Standards at: <http://www.state.ma.us/dep/bwp/iww/files/314cmr4.htm>.
- (3) *Real Estate Subdivision* - Any discharge of dredged or fill material associated with the creation of a real estate subdivision, unless there is a recorded deed restriction providing notice to subsequent purchasers limiting the amount of fill for the single and complete project to less than 5000 square feet cumulatively of bordering and isolated vegetated wetlands and land under water and the discharge is not to an Outstanding Resource Water. Real estate subdivisions include divisions where approval is required and where approval is not required under the Subdivision Control Law, MGL. c. 41, §81K through 81GG. Discharges of dredged or fill material to create the real estate subdivision include but are not limited to the construction of roads, drainage, sidewalks, sewer systems, buildings, septic systems, wells, and accessory structures.
- (4) *Activities Exempt under MGL. c. 131, §40.* Any activity not subject to MGL. c. 131, §40, which is subject to 33 USC 1251, et seq. and will result in any discharge of dredged or fill material to bordering vegetated wetlands or land under water.

(5) *Routine Maintenance*. Routine maintenance of existing channels, such as mosquito control projects or road drainage maintenance, that will result in the annual loss of more than 5000 square feet cumulatively of bordering and isolated vegetated wetland and land under water will be evaluated under the criteria of 314 CMR 9.06. A single application may be submitted and a single certification may be issued for repeated routine maintenance activities on an annual or multi-year basis not to exceed five years.

(6) *More than 5000 sq. ft. of Isolated Vegetated Wetlands*. Any activity in an area not subject to jurisdiction of MGL. c. 131, §40 that is subject to 33 U.S.C.1251, et seq. (i.e., isolated vegetated wetlands) which will result in the loss of more than 5000 square feet cumulatively of bordering and isolated vegetated wetlands and land under water.

(7) *Rare and Endangered Species Habitat in Isolated Vegetated Wetlands*. Any activity resulting in the discharge of dredged or fill material to an isolated vegetated wetland that has been identified as habitat for rare and endangered species.

(8) *Salt Marsh*. Any activity resulting in the discharge of dredged or fill material in any salt marsh.

(9) *Individual 404 Permit*. Any activity that is subject to an Individual Permit under Section 404 of the Clean Water Act by the Corps of Engineers.

(10) *Agricultural Limited Project*. Agricultural work, not exempt under MGL. c. 131, §40, referenced in and performed in accordance with 310 CMR 10.53(5). Provided the activity does not result in any discharge of dredged or fill material to an Outstanding Resource Water, such work will be presumed to meet the criteria of 314 CMR 9.06 where a comparable alternatives analysis is performed by the Natural Resources Conservation Service and included in the Notice of Intent.

(11) *Discretionary Authority*. Any activity where the Department invokes discretionary authority to require an application based on cumulative effects of activities, cumulative effects from the discharge of dredged or fill material to bordering or isolated vegetated wetlands or land under water, or other impacts that may jeopardize water quality. The Department will issue a written notice of and statement of reasons for its determination to invoke this discretionary authority not later than ten business days after its receipt of an Order of Conditions.

(12) *Dredging Greater than 100 c.y.* Any dredging or dredged material disposal of more than 100 cubic yards in navigable waters.

Emergency Situations Procedures

Emergency situations are limited to sudden, unexpected occurrences that could potentially result in an unacceptable hazard to life, a significant loss of property, or an immediate, unforeseen, and significant economic hardship if corrective action requiring a permit is not undertaken within a time period less than the normal time needed to process an application under standard procedures. If an emergency situation requires action in less than 30 days after the occurrence, it qualifies for the amended notification procedures described below.

Notification Procedures for Emergency Situations:

Any project proponent may request emergency authorization from the Corps, however the Corps will determine if a project qualifies for these emergency situation procedures. The Federal resource agencies, the Massachusetts Historical Commission and the tribes will each designate an emergency contact and an alternate in the event the regular contact is unavailable. When an application for Category 2 work is received that the Corps determines is an “emergency” as defined above, the Corps will fax a copy of the plans and Determination of Eligibility to the agency representatives and their alternates. The resource agencies would then have sixteen working hours to notify the Corps if they have any comments on authorization of the project under the PGP. Objections to the Corps determination of an “emergency” situation will not be accepted. If no response is received within two working days, the Corps will proceed with a decision on the application. If the resource agencies have comments on the proposal, they will have two working days to put their comments in writing. If written comments from the Federal agencies are not received within two working days, the Corps will proceed with a decision on the application.

If a Federal agency requests that an Individual Permit be required for a project or requests modifications to the project based on concerns within their area(s) of expertise, the Corps will notify the applicant within one working day of receipt of that request that the project as proposed does not qualify for authorization under this PGP and the emergency Individual Permit procedures may be followed. In any event, the Corps will notify the applicant within two working days of commencement of the screening process as to whether the project may proceed under this PGP.

Notification Procedures for FEMA and MEMA Declared Emergency Situations.

The Massachusetts DEP, Massachusetts Emergency Management Agency (MEMA), or the Federal Emergency Management Agency (FEMA) will notify the Corps within 24 hours of the occurrence of a disaster and advise the Corps of the nature of the occurrence and any known remedial and/or protective measures. The Corps will notify the emergency contact of the Federal resource agencies, the Massachusetts Historical Commission and the tribes that a disaster has occurred within one working day of being notified by the MA DEP, MEMA or FEMA. The Corps will work with FEMA, MEMA and the emergency contacts under the “Notification Procedures for Emergency Situations” section above to expedite authorization under this PGP.

IV. CORPS AUTHORIZATIONS: INDIVIDUAL PERMIT

Work that is defined in the Individual Permit category of Appendix A - Definition of Categories or that does not meet the terms and conditions of this PGP will require an application for an Individual Permit from the Corps (see 33 CFR Part 325.1). The screening procedures outlined for Category 2 projects will only serve to delay project review in such cases. The applicant shall submit the appropriate application materials (including the Corps application form) at the earliest possible date. General information and application forms can be obtained at our web site (See Page 17), or by calling (978) 318-8338, (800) 362-4367, or (800) 343-4789 outside of Massachusetts. Individual WQC and CZM consistency concurrence are required when applicable from the Commonwealth of Massachusetts before Corps permit issuance.

V. PROGRAMMATIC GENERAL PERMIT CONDITIONS:

The following conditions apply to activities authorized under this PGP, including all Category 1 (non-reporting) and Category 2 (reporting – requiring screening) activities:

General Requirements

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

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 of Engineers concerning “waters of the United States” and “navigable waters of the United States.” Wetland boundaries shall be delineated in accordance with the January 1987 Corps of Engineers Wetlands Delineation Manual, located at <http://www.saj.usace.army.mil/permit/documents/87manual.pdf>. The U.S. Fish and Wildlife Service publishes the National List of Plant Species that Occur in Wetlands, located at <http://www.nwi.fws.gov>. The Natural Resources Conservation Service (NRCS) publishes the current hydric soil definition, criteria and lists, located at <http://www.statlab.iastate.edu/soils/hydric>.

3. Minimal Effects. Projects authorized by this PGP shall have minimal individual and cumulative adverse environmental impacts as determined by the Corps.

4. Discretionary Authority. Notwithstanding compliance with the terms and conditions of this permit, the Corps retains discretionary authority to require an Individual Permit review 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 consequences of the proposal warrant 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 that warrants greater review.

Whenever the Corps notifies an applicant that an Individual Permit may be required, authorization under this PGP is voided and no work may be conducted until the Corps Individual Permit is obtained 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 shall be treated together as constituting one single and complete project and/or all planned phases of a multi-phased project. 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 United States (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 be reviewed for Category 1 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 Category 2 activity, then the entire linear project shall be reviewed as one project under Category 2. Also, this PGP shall not be used for any activity that is part of an overall project for which an Individual Permit is required.

6. Permit On-Site. For Category 2 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.

National Concerns:

7. Historic Properties. Any activity authorized by this PGP shall comply with Section 106 of the National Historic Preservation Act. Information on the location and existence of historic resources can be obtained from the Massachusetts Historic Preservation Officer, the National Register of Historic Places, and the Wampanoag, Stockbridge-Munsee and Narragansett Tribal Historic Preservation Officers. See Page 17 for historic properties contacts and geographic areas of concern for each. Project proponents shall apply to the Corps for all projects that would otherwise qualify for Category 1 if there is the potential for an effect on a historic property within the permit area or any known historic property that may occur outside the permit area. Historic properties include those that are eligible for inclusion, but not necessarily listed on the National Register. If the permittee, during construction of work authorized herein, encounters a previously unidentified archaeological or other cultural resource within the area subject to Department of the Army jurisdiction that might be eligible for listing in the National Register of Historic Places, he/she shall immediately notify the District Engineer.

8. National Lands. Activities authorized by this PGP shall not impinge upon the value of any National Wildlife Refuge, National Forest, National Marine Sanctuary (e.g. Stellwagen Bank) or any area administered by the National Park Service (e.g. Cape Cod National Seashore)

9. Endangered Species. No activity authorized under this PGP permit may affect a threatened or endangered species or a species proposed for such designation, as identified under the Federal Endangered Species Act (ESA), or which is likely to destroy or adversely modify the critical habitat of such species, or which would result in a “take” of any threatened or endangered species of fish or wildlife, or which would result in any other violation of Section 9 of the ESA protecting threatened or endangered species of plants. Applicants shall notify the Corps if any listed species or critical habitat is in the vicinity of the project and shall not begin work until notified by the district engineer that the requirements of the ESA have been satisfied and that the activity is authorized. Information on the location of threatened and endangered species and their critical habitat can be obtained from the U.S. Fish and Wildlife Service and National Marine Fisheries Service (NMFS) (addresses listed on Page 16).

10. Essential Fish Habitat. As part of the PGP screening process, the Corps will coordinate with NMFS in accordance with the 1996 amendments to the Magnuson-Stevens Fishery and Conservation Management Act 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, or growth to maturity.” Applicants may be required to describe and identify potential impacts to EFH. Any work, except for exploratory drilling and borings for bridges, in streams in the Connecticut and Merrimack River watersheds that are stocked with Atlantic salmon (see attached lists) shall not be authorized under Category 1 of the MAPGP and must be screened for potential impacts to EFH. Conservation recommendations made by NMFS will normally be included as a permit requirement by the Corps. For additional information see the EFH list on Page 18 and the EFH regulations at 50 CFR Part 600 (<http://www.nmfs.noaa.gov>). Additional information on the location of EFH can be obtained from NMFS. The NMFS contact information is provided on Page 16.

11. Wild and Scenic Rivers. Any activity that occurs in a component of, or within 0.25 mile up or downstream of the main stem or tributaries of a 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 procedures of Category 2 of this PGP regardless of 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 official study status. The Corps will consult with the National Park Service (NPS) with regard to potential impacts of the proposed work on the resource values of the wild and scenic river. The culmination of this coordination will be a determination by the NPS and the Corps that the work: (1) may proceed as proposed; (2) may proceed with recommended conditions; or (3) could pose a direct and adverse effect on the resource values of the river and an Individual Permit is required. If preapplication consultation between the applicant and the NPS 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 Massachusetts as of December 1999, include: **Sudbury/Assabet/Concord Rivers** as follows: the Sudbury from the Danforth Street bridge in Framingham downstream to the confluence with the Assabet, the Assabet from 1,000 feet below the Damon Mill Dam downstream to the confluence with the Sudbury, and the Concord from the confluence of the Sudbury and Assabet downstream to the Route 3 bridge in Billerica; and **Westfield River** as follows: East Branch from the Cummington/Windsor, MA, town line downstream to 0.8 mile upstream of the confluence with Holly Brook, the Middle Branch from the Peru/Worthington, MA, town line downstream to the confluence with Kinne Brook, and 0.4 mile of the Glendale Brook tributary from Clark Wright Road bridge to the confluence with the Middle Branch, and the West Branch from the railroad bridge 2,000 feet downstream of Becket Village in Becket, MA, downstream to the Chester/Huntington, MA, town line. The Taunton River from the confluence of the Town River and Matfield River in Bridgewater downstream to the Mt. Hope Bay in Fall River is under congressionally authorized study as a potential addition to the Wild and Scenic Rivers System.

12 Federal Navigation Project. Any structure or work that extends closer to the horizontal limits of any Corps Federal Navigation Project (see Appendix B) than a distance of three times the project’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.

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

14. Navigation. There shall be no unreasonable interference with navigation by the existence or use of the activity authorized herein, and no attempt shall be made by the permittee to prevent the full and free use by the public of all navigable waters at or adjacent to the activity authorized herein. The permittee understands and agrees that, if future operations by the United States 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 of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.

Minimization of Environmental Impacts:

15. Minimization. Discharges of dredged or fill material into waters of the United States, including wetlands, shall be avoided and minimized to the maximum extent practicable. Permittees may only fill those jurisdictional wetlands that the Corps authorizes to be filled and impact those wetlands 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 Clean Water Act.

16. Heavy Equipment in Wetlands. Heavy equipment other than fixed equipment (drill rigs, fixed cranes, etc.) authorized to work within wetlands shall not be stored, maintained or repaired in wetlands, and as much as possible it shall not be operated there. Where construction requires the operation of heavy equipment in wetlands it shall not be located directly on wetland soils and vegetation; it shall be placed on swamp or timber mats that are adequate to support the equipment in such a way as to minimize disturbance of wetland soil and vegetation. Mats are considered fill. Other support structures that are less impacting and are capable of safely supporting equipment may be used with written Corps authorization. Similarly, not using swamp mats during frozen, dry or other conditions may be allowed with written Corps authorization. An adequate supply of spill containment equipment shall be maintained on site.

17. Temporary Fill. No temporary fill (e.g., access roads, cofferdams) shall be placed in waters of the U.S. (including wetlands) unless specifically authorized in writing by the Corps. If temporary fill is authorized it shall be stabilized and maintained during construction in such a way as to prevent its eroding into portions of waters of the U.S. where it is not authorized. Mats or corduroy roads (See 16 above) are considered temporary fill when removed before a project's completion. You must add their total coverage area to the overall wetland impact area for your project when determining whether your project qualifies for an Individual Permit or Category 1 or 2 of this PGP.

- Unconfined temporary fill authorized for discharge into flowing water (rivers and streams) shall consist only of clean washed stone.
- Temporary fill authorized for discharge into wetlands shall be placed on geotextile fabric laid on

the pre-construction wetland grade.

- 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 Condition 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.
- No temporary work shall drain a water of the U.S. by providing conduit for water on or below the surface.

18. Restoration.

- Upon completion of construction, all disturbed wetland areas (the disturbance of these areas must be authorized) shall be stabilized with a wetland seed mix containing only plant species native to New England.
- The introduction or spread of invasive plant species in disturbed areas shall be controlled.
- 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. Coastal Bank Stabilization. Projects involving reconstruction or maintenance of an existing coastal bank stabilization structure within Corps jurisdiction should be designed to minimize environmental effects to the maximum extent practicable (includes minimization of scour, etc.).

20. Sedimentation and Erosion Control. Adequate sedimentation and erosion control management measures, practices and devices, such as phased construction, vegetated filter strips, geotextile silt fences or other devices, shall be installed and properly maintained to reduce erosion and retain sediment on-site during and after construction. They shall be capable of preventing erosion, of collecting sediment, suspended, and floating materials, and of filtering fine sediment. These devices shall be removed upon completion of work and the disturbed areas shall be stabilized. The sediment collected by these devices shall be removed and placed at an upland location, in a manner that will prevent its later erosion into a waterway or wetland. All exposed soil and other fills shall be permanently stabilized at the earliest practicable date.

21. Waterway Crossings. (a) All temporary and permanent crossings of waterbodies shall be suitably culverted, bridged, or otherwise designed to withstand and to prevent the restriction of high flows, and so as not to obstruct the movement of aquatic life indigenous to the waterbody beyond the actual duration of construction. (b) There shall be no projects involving open trench excavation in flowing waters. However, these projects may qualify for Category 1 provided they utilize management techniques such as temporary flume pipes, culverts, cofferdams, etc. and maintain normal flows within the stream boundary's confines (see Appendix A, Endnote 2) so the work does not occur in flowing waters. Projects utilizing these management techniques must meet the other Category 1 requirements (see Appendix A, Page 1) and all of this PGP's terms and conditions. If not, they will require review under the Category 2 screening procedures. Projects proposing no management techniques to avoid open trench excavation will require an Individual Permit. (c) Temporary bridges, culverts, or cofferdams shall be used for equipment access across streams (note:

areas of fill and/or cofferdams must be included in total waterway/wetlands impacts to determine applicability of this PGP). (d) For projects that otherwise meet the terms of Category 1, in-stream construction work shall be conducted during the low flow period, July 1 to October 1 in any year. Projects that are not to be conducted during that time period are ineligible for Category 1 and shall be screened pursuant to Category 2, regardless of the waterway and wetland fill and/or impact area.

22. Discharge of Pollutants. All activities involving any discharge of pollutants into waters of the United States authorized under this PGP shall be consistent with the Massachusetts DEP's Stormwater Management Policy (as described in "Stormwater Management, Volume One: Stormwater Policy Handbook," March 1997, or subsequent versions), applicable water quality standards, effluent limitations, standards of performance, prohibitions, and pretreatment standards and management practices established pursuant to the Clean Water Act (33 USC 1251), and other applicable State and local laws. If applicable water quality standards, limitations, etc. are revised or modified during the term of this permit, the authorized work shall be modified to conform with these standards within six months of the effective date of such revision or modification, or within a longer period of time deemed reasonable by the District Engineer in consultation with the Regional Administrator of the Environmental Protection Agency. Applicants may presume that State water quality standards are met with issuance of the WQC.

23. Spawning Areas. Discharges and/or suspended sediment producing activities in fish and shellfish spawning or nursery areas during spawning seasons shall be avoided. During all times of year, impacts to these areas shall be avoided or minimized to the maximum extent practicable.

24. Storage of Seasonal Structures. Coastal structures, such as pier sections and floats, that are removed from the waterway for a portion of the year shall be stored in an upland location, located above mean high water and not in tidal wetlands.

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

Procedural Conditions:

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

27. Maintenance. The permittee shall maintain the activity authorized by this permit in good condition and in conformance with the terms and conditions of this permit. This does not include maintenance of dredging projects. Maintenance dredging is subject to the review thresholds in Appendix A: Definition of Categories (attached), and/or any conditions included in a written Corps authorization. Maintenance dredging includes only those areas and depths previously authorized and dredged. Some maintenance activities may not be subject to regulation under Section 404 in accordance with 33 CFR 323.4(a)(2)

28. Property Rights. This permit does not convey any property rights, either in real estate or

material, or any exclusive privileges, nor does it authorize any injury to property or invasion of rights or any infringement of Federal, State, or local laws or regulations.

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

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

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

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

33. 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 must restore the area to the satisfaction of the District Engineer.

34. Enforcement cases. This PGP does not apply to any existing or proposed activity in Corps jurisdiction associated with an on-going Corps of Engineers or Environmental Protection Agency enforcement action, until such time as the enforcement action is resolved or the Corps and/or EPA determines that the activity may proceed independently without compromising the enforcement action.

Duration of Authorization/Grandfathering:

35. Duration of Authorization. This PGP expires five years from the effective date listed at the top of Page 1. Activities authorized under Category 1 of this PGP that have commenced (i.e., are under construction) or are under contract to commence in reliance upon this PGP's authorization will remain authorized provided the activity is completed within twelve months of this PGP's expiration date. Activities authorized under Category 2 of this PGP will remain authorized in accordance with the project-specific date that the Corps provides to the permittee in the PGP authorization letter, unless:

- (a) the PGP is either modified or revoked, or
- (b) discretionary authority has been exercised on a case-by-case basis to modify, suspend, or revoke the authorization in accordance with 33 CFR 325.2(e)(2).

The permittee must be able to document to the Corps satisfaction that the project was under construction or contract by the appropriate date. Activities completed under the Category 1 or Category 2 authorizations of this PGP will continue to be authorized by this PGP after its expiration date.

36. Previously Authorized Activities.

- (a) Activities completed under the authorizations of past PGP's that were in effect at the time the activity was completed will continue to be authorized by those PGP's.
- (b) Projects that have received written verification or approval from the Corps, based on applications made to the Corps prior to issuance of this PGP for the previous nationwide permits, regional general permits, or letters of permission shall remain authorized as specified in each authorization.
- (c) Activities authorized pursuant to 33 CFR Part 330.3 ("Activities occurring before certain dates") are not affected by this PGP.

VI. CONTACTS FOR PROGRAMMATIC GENERAL PERMIT:

1. FEDERAL

U.S. Army Corps of Engineers
Regulatory Branch
696 Virginia Road
Concord, Massachusetts 01742
(978) 318-8335
(800) 343-4789 (ME, VT, NH, RI, CT)
(800) 362-4367 (Massachusetts)

Wild and Scenic Rivers:
National Park Service
North Atlantic Region
15 State Street
Boston, Massachusetts 02109
(617) 223-5191

**Federal Endangered Species and
Essential Fish Habitat:**

National Marine Fisheries Service
One Blackburn Drive
Gloucester, Massachusetts 01930
(978) 281-9300

Federal Endangered Species:
U.S. Fish and Wildlife Service
70 Commercial Street, Suite 300
Concord, New Hampshire 03301
(603) 223-2541

2. STATE OF MASSACHUSETTS

Department of Environmental Protection (DEP):

DEP Division of Wetlands and Waterways
One Winter Street
Boston, Massachusetts 02108
(617) 292-5695

DEP Regional Offices:

DEP-Western Regions
Wetlands Protection Program
436 Dwight Street
Springfield, Massachusetts 01103
(413) 784-1100

DEP-Southeast Region
Wetlands Protection Program
20 Riverside Drive, Route 105
Lakeville, Massachusetts 02347
(508) 946-2800

DEP-Central Region
Wetlands Protection Program
627 Main Street
Worcester, Massachusetts 01608
(508) 792-7650

DEP-Northeast Region
Wetlands Protection Program
One Winter Street, 5th Floor
Boston, Massachusetts 02108
(617) 292-5500

Massachusetts Office of Coastal Zone Management (CZM)

Coastal Zone Management
251 Causeway Street, Suite 900
Boston, Massachusetts 02114
(617) 626-1200

Massachusetts Division of Marine Fisheries

Massachusetts Division of Marine Fisheries
SE Marine Fisheries Station
50A Portside Drive
Pocasset, Massachusetts 02559
(508) 563-1779

3. HISTORIC PROPERTIES:

Massachusetts Historical Commission
The Massachusetts Archives Bldg.
220 Morrissey Boulevard
Boston, Massachusetts 02125
(617) 727-8470
(617) 727-5128 (fax)
Area of concern: All of Massachusetts

Wampanoag Tribal Historic
Preservation Officer
20 Black Brook Road
Aquinnah, MA 02535
(508) 645-9265
(508) 645-3233 (fax)
Area of concern: All of Massachusetts

Narragansett Tribal Historic
Preservation Officer
P.O. Box 700
Wyoming, Rhode Island 02898
(401) 539-1190
(401) 742-5048 (cell)
(401) 539-4217 (fax)
Area of concern: All of Massachusetts

Tribal Historic Preservation Officer
c/o Stockbridge-Munsee Community
P.O. Box 70
Bowler, Wisconsin 54416
(715) 793-3970
Area of concern: West of Connecticut River

4. ORGANIZATIONAL WEBSITES:

Army Corps of Engineers
Corps of Engineers Headquarters
Environmental Protection Agency
National Marine Fisheries Service
U.S. Fish and Wildlife Service
National Park Service
MA Executive Office of Env. Affairs
MA Dept. of Environmental Protection
MA DEP, Division of Wetlands
MA DEP, Division of Waterways
MA Division of Marine Fisheries
MA Div. of Fisheries & Wildlife
MA Endangered Species Program
MA Coastal Zone Management
MassGIS

www.nae.usace.army.mil (click "Regulatory/Permitting")
www.usace.army.mil (click "Services for the Public")
<http://www.epa.gov/owow/wetlands/>
www.nmfs.noaa.gov
www.fws.gov
www.nps.gov/rivers/index.html
www.state.ma.us/envir
www.state.ma.us/dep (access the four regional offices)
www.state.ma.us/dep/brp/ww/rpwwhome.htm
www.state.ma.us/dep/brp/waterway/waterway.htm
www.state.ma.us/dfwele/dmf/
www.state.ma.us/dfwele/dfw/dfw_toc.htm
www.state.ma.us/dfwele/dfw/nhesp/heritage.htm
www.state.ma.us/czm
www.state.ma.us/mgis/massgis.htm

MA Historical Commission
Wampanoag Tribe
Narragansett Tribe
Stockbridge-Munsee Tribe

www.state.ma.us/sec/mhc
www.wampanoagtribe.net
www.narragansetttribe.com
www.mohican.com

VII. ESSENTIAL FISH HABITAT (EFH)

Any fill in the following Waters of the U.S. in the specified towns must be reviewed under Category 2 of the MAPGP for potential impacts to EFH for Atlantic salmon. The following streams are stocked with Atlantic salmon (*Salmo salar*). Please note that the mainstems of the Connecticut and Merrimack Rivers are Navigable waters of the U.S. and any fill in them must be reviewed under Category 2. Any questions on locations should be directed to the Corps.

Connecticut River Watershed

Agawam:	Westfield River
Ashfield:	Bear River, South River to Baptist Corner Road
Athol:	Millers River
Becket:	Depot Brook, Shaker Mill Brook, Walker Brook to Spark Brook, West Branch Westfield River, Yokum Brook to Rudd Pond Brook
Bernardston:	Fall River
Blandford:	Wigwam Brook
Buckland:	Deerfield River
Charlemont:	Chickley River, Cold River, Deerfield to Pelham Brook, North River, Pelham Brook
Chester:	Middle Branch Westfield River, Walker Brook, West Branch Westfield River
Chesterfield:	Child's Brook West Branch, Dead Branch, Tower Brook, Westfield River
Colrain:	North River, East Branch North River, West Branch North River, Green River
Conway:	Bear River, Deerfield River, Poland Brook, South River
Cummington:	Bartlett Brook, Child's Brook West Branch, Meadow Brook, North Branch Swift River to Stage Road, Swift River, Westfield Brook, Westfield River
Deerfield:	Deerfield River
Easthampton:	Manhan River to North Branch Manhan River, North Branch Manhan River
Erving:	Millers River
Florida:	Cold River
Gill:	Fall River
Goshen:	Swift River
Greenfield:	Allen Brook, Deerfield River, Fall River, Green River
Hatfield:	Mill River to West Brook, West Brook
Hawley:	Chickley River to King Brook, Mill Brook to Gorge Hill Road
Huntington:	Dead Branch to Westfield River, Little River, Middle Branch Westfield River Pond Brook to Searle Road, Roaring Brook to Mica Mill Road, West Branch Westfield River, Westfield River
Leverett:	Sawmill River
Leyden:	Green River
Middlefield:	Factory Brook, Middle Branch Westfield River to Tuttle Brook, West Branch Westfield River
Montague:	Millers River, Sawmill River
Montgomery:	Westfield River, Roaring Brook
Northampton:	North Branch Manhan River
Orange:	Millers River
Plainfield:	Bartlett Brook to Prospect Street, Meadow Brook to Gloyd Street
Rome:	Pelham Brook to Rice Brook
Royalston:	Millers River to Birch Hill Dam
Russell:	Bradley Brook, Potash Brook, Stage Brook, Westfield River

Savoy: Cold River to Black Brook, Westfield River to Griffin Hill Road
 Shelburne: Allen Brook, Deerfield River, North River
 Shutesbury: Sawmill River
 Southampton: North Branch Manhan River
 Southwick: Munn Brook
 Washington: Depot Brook to Frost Road
 Wendell: Millers River
 Westfield: Little River to Munn Brook, Moose Meadow Brook to Mass Turnpike, Munn Brook,
 Westfield River
 Westhampton: Dead Branch, North Branch Manhan River to Northwest Road
 West Springfield: Westfield River
 Whately: West Brook to Haydenville Road
 Windsor: Westfield Brook to East Windsor Road, Westfield River
 Worthington: Bronson Brook, Child's Brook West Branch, Little River to Goss Hill Road, Middle
 Branch Westfield River to Tuttle Brook

Merrimack River Watershed

Pepperell: Nissitissit River to Nashua River, Nashua River from Nissitissit River to
 New Hampshire border

VIII. AQUACULTURE GUIDELINES

NOTE: The following guidelines are excerpted from Corps Aquaculture Letter of Permission dated September 1, 1991, with some modern clarifications.

Shellfish Aquacultural Facilities are used for bottom and/or suspended culturing and harvesting of bivalve mollusks in the inter-tidal and immediate sub-tidal area of navigable waters. Activities covered include: deployment and maintenance of buoys, rafts, trays, lines, and other equipment associated with the activity; discharge of minor quantities of fill material (i.e. as mineral growth medium) and work, including seed placement, transplanting, temporary wet storage, and harvesting. Activity must be found to have minimal impacts on navigation and the environment and must meet the following specific criteria:

- A. The area authorized for this activity shall not exceed 10 acres, except where the permittee is a duly authorized municipality, for which the maximum size shall be 25 acres;
- B. The area and any elevated structures within it are marked in conformance with 33 CFR 64, and permittee has contacted the U.S. Coast Guard, *First District*, Aids to Navigation Branch (617) 223-3293 to coordinate the proper buoy markings for the activity. Buoys shall be deployed and maintained as appropriate.
- C. No structure or device (except for marking buoys and as noted in D below) shall protrude more than 18" above the substrate;

D. Rafts and other floating equipment may be allowed to the extent that they cover no more than 10% of the project area, or 20,000 square feet, whichever is greater. An area shall be considered to be covered with floating equipment if normal navigation through the area is precluded. Projects which are in-place and authorized by the municipality (and State Division of Marine Fisheries if applicable) *by 1 September 1991* which have areas containing floating equipment exceeding the aforementioned limits may be authorized if they meet the remaining criteria. All rafts shall be securely anchored to the bottom, and all “lines” shall be attached to fixed mooring points at both ends;

E. Any fill material imported to the project from off site (*This is limited to mineral growth medium used in culture trays*) shall be clean and of comparable grain size to the native substrate;

F. No activity shall occur within a distance of 25 feet from beds of eelgrass, widgeongrass, or saltmarsh, nor shall such vegetation be damaged or removed.

G. An activity shall be deemed not applicable under this PGP if it can be shown that the activity, including any vehicular access, will have more than minimal negative impacts on avian resources such as, but not limited to: shore birds, wading birds, or members of the waterfowl group. This is meant to include migratory bird nesting, feeding or resting activities (see 50 CFR 10.13);

H. An activity shall be deemed not applicable under this PGP if it can be shown that the activity, including any vehicular access, will have more than minimal negative impacts on existing or naturally occurring beds or population of shellfish, marine worms or other invertebrates that could be used by humans, other mammals, birds, reptiles, or predatory fish.

I. No activity nor vehicular access to an activity shall occur in such a way as to negatively impact coastal or freshwater wetlands, or any endangered or threatened species on either the Federal or Massachusetts species list.

DISTRICT ENGINEER

DATE

APPENDIX A: DEFINITION OF CATEGORIES

I. INLANDS WATERS AND WETLANDS	¹ Inland Waters and Wetlands: Rivers, streams, lakes, ponds & wetlands, excluding Section 10 Navigable Waters of the U.S. For the purposes of this PGP, the area between the mean high water (MHW) and the high tide line (HTL), and the bordering and contiguous wetlands to tidal waters are regulated as navigable waters. (See II. Navigable Waters on the next page.)		
	CATEGORY 1	CATEGORY 2	INDIVIDUAL PERMIT
(a) NEW FILL/ EXCAVATION DISCHARGES	<p>Less than 5,000 SF inland waterway and/or wetland fill and secondary impacts (e.g., areas drained, flooded, or cleared). Impact area includes all temporary and permanent fill and excavation discharges, except for incidental fallback.</p> <p>* In-stream work limited to July 1-October 1.</p> <p>* <u>This category excludes:</u></p> <ul style="list-style-type: none"> • dams, dikes, or activities involving water diversions² • work in special inland waters & wetlands⁴ & special aquatic sites⁶ other than wetlands. • open trench excavation in flowing waters. See Condition 21. • work on Corps properties and Corps-controlled easements³. • work in streams in the Connecticut and Merrimack River watersheds that are stocked with Atlantic salmon (<i>Salmo salar</i>). (See Page 18.) 	<p>5,000 SF to 1 acre inland waterway and/or wetland fill and secondary impacts (e.g., areas drained, flooded, or cleared). Impact area includes all temporary and permanent fill and excavation discharges, except for incidental fallback.</p> <p>Projects <u>with</u> proactive restoration as a primary purpose with any impact amount can be reviewed under Cat.2. The Corps in consultation with State and Federal agencies must determine that net adverse effects are not more than minimal.</p> <p>Specific activities required to affect the containment, stabilization, or removal of hazardous or toxic waste materials that are performed, ordered, or sponsored by a government agency with established legal or regulatory authority. Wetlands must be restored <u>in place</u>.</p>	<p>Greater than 1 acre inland waterway and/or wetland fill and secondary impacts (e.g., areas drained, flooded, or cleared). Impact area includes all temporary and permanent fill and excavation discharges, except for incidental fallback.</p> <p>EIS required by the Corps.</p>
(b) BANK STABILIZATION PROJECTS	<p>Inland bank stabilization less than 500 FT long and less than 1 CY fill per linear foot below ordinary high water.</p> <p>* In-stream work limited to July 1-October 1.</p> <p>* No work in special inland waters & wetlands⁴ and special aquatic sites⁶.</p> <p>* No open trench excavation in flowing waters. See Condition 21.</p> <p>* No work on Corps properties and Corps-controlled easements³.</p> <p>* No work in streams in the Connecticut and Merrimack River watersheds that are stocked with Atlantic salmon (<i>Salmo salar</i>).</p>	<p>Inland bank stabilization greater than 500 ft. long and/or greater than 1 CY fill per linear foot, or any amount with fill in wetlands.</p>	

(c) REPAIR AND MAINTENANCE OF AUTHORIZED FILLS.	Repair/maintenance of existing currently-serviceable, authorized fills with no expansion or change in use. ³ *Conditions of the original authorization apply, however minor deviations in fill design allowed ¹²	Replacement of non-serviceable fill, or repair/maintenance of serviceable fill, with expansion up to 1 acre, or with a change in use.	Replacement of non-serviceable fill, or repair/maintenance of serviceable fill, with expansion greater than 1 acre.
II. NAVIGABLE WATERS	⁵ Navigable Waters of the United States: Waters that are subject to the ebb and flow of the tide and Federally designated navigable rivers (the Merrimack River, Connecticut River, and Charles River to the Watertown Dam in Massachusetts) (Section 10 Rivers and Harbors Act of 1899). For the purposes of this PGP, the area between the mean high water (MHW) and the high tide line (HTL), and the bordering and contiguous wetlands to tidal waters are also regulated as navigable waters.		
	CATEGORY 1	CATEGORY 2	INDIVIDUAL PERMIT
(a) FILL	<p>Fills authorized by Ch.91 Amnesty program (e.g., seawalls or bulkheads).</p> <p>No provisions for new or previously unauthorized fills in Category 1, other than those authorized under the MA Chapter 91 Amnesty program.</p> <p>Discharges of dredged or fill material incidental to the construction of bridges across navigable waters of the United States, including cofferdams, abutments, foundation seals, piers, and temporary construction and access fills provided the U.S. Coast Guard authorizes such discharges as part of the bridge permit. Causeways and approach fills are not included in this category and require Category 2 or Individual Permit authorization.</p>	<p>Up to 1 acre fill and/or secondary waterway impacts (e.g., areas drained or flooded). Fill includes temporary and permanent waterway fill.</p> <p>Temporary fill and excavation, up to 1 acre in special aquatic sites (SAS)⁶.</p> <p>No permanent fill and/or excavation in SAS⁶ except when associated with a project <u>with</u> proactive restoration as a primary purpose or a <i>water-dependent industrial use [310 CMR 9.12(2)(b)] project in a MA DEP Designated Port Area</i>. Proactive restoration projects with any amount of impact can be reviewed under Cat. 2. The Corps, in consultation with State & Federal agencies, must determine the net adverse effects are not more than minimal.</p>	<p>Greater than 1 acre waterway fill and/or secondary waterways or wetland impacts (e.g., areas drained or flooded). Fill includes temporary and permanent waterway fill.</p> <p>Temporary fill and excavation greater than 1 acre in special aquatic sites⁶.</p> <p>Permanent fill or excavation, any amount, in special aquatic sites⁶, other than as specified in Cat. 2.</p> <p>EIS required by the Corps.</p>
(b) REPAIR AND MAINTENANCE WORK	Repair/maintenance of existing, currently serviceable, authorized structures and fills and Amnesty-approved fills, with no expansion or change in use. * Must be rebuilt in same footprint, however minor deviations in structure design allowed ¹²	Replacement of non-serviceable structures and fills or repair/maintenance of serviceable structures or fills, with fill replacement or expansion up to 1 acre.	Replacement of non-serviceable structures and fills or repair/maintenance of serviceable structure or fill, with replacement or expansion greater than 1 acre.

(c) DREDGING	<p>Maintenance dredging less than 1,000 CY with upland disposal, provided proper siltation controls are used.</p> <p><u>Provided:</u></p> <ul style="list-style-type: none"> • Dredging & disposal operation limited to November 1-January 15. • No impacts to special aquatic sites⁶. • Includes return water from upland contained disposal area. <p>New Bedford Harbor navigational dredging with disposal either in locations approved by EPA in accordance with the New Bedford Harbor Superfund Site Record of Decision or in Confined Aquatic Disposal (CAD) cells specifically identified under the Final EIR for the Dredged Material Management Plan (DMMP) for New Bedford and Fairhaven, MA (EOEA No. 11669).</p>	<p>Maintenance dredging greater than 1,000 CY, new dredging up to 25,000 CY, or projects that don't meet Cat.1.</p> <p><u>Provided:</u></p> <ul style="list-style-type: none"> • No impacts to special aquatic sites⁶. • Disposal includes upland, beach nourishment <1acre of fill, beach nourishment >1 acre if sand is from an upland source or the dredging's primary purpose is navigation and Corps, in consultation w/Federal and State agencies, determines that net adverse effects are not more than minimal. Open water & confined aquatic disposal, if Corps, in consultation with Federal and State agencies, finds the material suitable. • Includes return water from upland contained disposal areas. 	<p>Maintenance dredging and/or disposal (any amount) in or affecting a special aquatic site⁶, new dredging greater than 25,000 c.y., or any amount in or affecting a special aquatic site⁶.</p>
	CATEGORY 1	CATEGORY 2	INDIVIDUAL PERMIT
(d) MOORINGS	<p>Private non-commercial, non-rental single-boat moorings authorized by the local harbormaster.</p> <p><u>Provided:</u></p> <ul style="list-style-type: none"> • Not associated with any boating facility⁷. • Not located within the horizontal limits⁸ of a Federal Navigation Project other than a Federal Anchorage. Moorings in Federal Anchorage not associated with a boating facility⁷. • Not located in vegetated shallows⁹. 	<p>Moorings associated with a boating facility⁷.</p> <p>Moorings that don't meet the terms in Cat. 1 and don't require an Individual Permit.</p> <p>Moorings located such that they, and/or vessels docked or moored at them, are within the buffer zone of the horizontal limits⁸ of a Corps Federal Channel. (See Appendix B.) The buffer zone is equal to three times the authorized depth of that channel.</p>	<p>Moorings within the horizontal limits⁸, or with moored vessels that extend within the horizontal limits, of a Federal Navigation Project (See Appendix B), except those in Federal Anchorages authorized under Cat. 1.</p> <p>Note: Federal Navigation Projects include both Federal Channels and Federal Anchorages.</p> <p>Any work in the area of the Cape Cod Canal¹¹ located west of the vertical lift railroad bridge as noted in Appendix C and specified at Endnote 11.</p>

<p>(e) PILE-SUPPORTED STRUCTURES AND FLOATS</p>	<p>Piers /structures licensed by Ch. 91 through the Amnesty program.</p> <p>Private, bottom-anchored floats up to 400 SF. in size.</p> <p>Private, pile-supported structures for navigational access to the waterway, \leq 400 SF in size, with attached floats totaling \leq 200 SF.</p> <p><u>Provided (for all of the above):</u></p> <ul style="list-style-type: none"> • Floats supported at least 2.5' above the substrate during all tides. • Pile-supported structures & floats are not positioned over vegetated shallows⁹ and moored vessels are not positioned over special aquatic sites⁶. • Pile-supported structures that are \leq 4' wide have at least a 1:1 height:width ratio¹⁰. • Ch. 91 license issued. • Not associated with a boating facility⁷. • Not located within the horizontal limits⁸ of a Corps Federal Navigation Project (See Appendix B) • No structure extends >25% of the waterway width at mean low water. • No SAS⁶ located within 25' of any structure. 	<p>Private piers and floats that don't meet the terms in Cat. 1, and don't require an Individual Permit.</p> <p>Pile-supported structures or floats located such that they, and/or vessels docked or moored at them, are within the buffer zone of the horizontal limits⁸ of a Corps Federal Navigation Project (FNP). (See Appendix B.) The buffer zone is equal to three times the authorized depth of that FNP.</p> <p>Note: Federal Navigation Projects include both Federal Channels and Federal Anchorages.</p> <p>Expansions to existing boating facilities⁷.</p>	<p>Pile-supported structures and floats associated with a new or previously unauthorized boating facility⁷.</p> <p>Pile-supported structures or floats located such that they and/or vessels docked or moored at them, are within the horizontal limits⁸ of a Corps Federal Navigation Project (See Appendix B).</p> <p>Note: Federal Navigation Projects include both Federal Channels and Federal Anchorages.</p> <p>Any work in the area of the Cape Cod Canal¹¹ located west of the vertical lift railroad bridge as noted in Appendix C and specified at Endnote 11.</p>
	<p>CATEGORY 1</p>	<p>CATEGORY 2</p>	<p>INDIVIDUAL PERMIT</p>
<p>(f) MISCELLANEOUS</p>	<p>Temporary buoys, markers, floats, and similar structures for recreational use during specific events, provided they are removed with 30 days after use is discontinued.</p> <p>Coast Guard-approved aids to navigation.</p> <p>Oil spill clean-up temporary structures & fill.</p> <p>Fish and wildlife harvesting structures and fill (as defined by 33 CFR 330, APP. A-4).</p> <p>Scientific measurement devices and survey activities such as exploratory drilling,</p>	<p>Structures or work in or affecting tidal or navigable waters that are not defined under any of the previous headings listed above. Includes, but is not limited to, utility lines, aerial transmission lines, pipelines, outfalls, boat ramps, and bridges.</p> <p>Shellfish aquaculture facilities in compliance with the Aquaculture Guidelines. Refer to Page 19.</p>	<p>EIS required by the Corps.</p> <p>Shellfish aquaculture facilities in compliance with the Aquaculture Guidelines. Refer to Page 19.</p> <p>Shellfish aquaculture facilities not in compliance with guidelines, including those facilities within 25 feet of eelgrass beds.</p>

	surveying, and sampling activities. Does not include oil and gas exploration and fill for roads or construction pads.		
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Endnotes/Definitions

- ¹ **Inland Waters and Wetlands:** Rivers, streams, lakes, ponds and wetlands, excluding Section 10 Navigable Waters of the U.S.
- ² **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.
- ³ **Corps Properties & Easements:** Contact the Corps, Real Estate Division (978) 318-8580 to initiate reviews re. both Corps holdings and permit requirements.
- ⁴ **Special Inland Waters and Wetlands:** Vernal; pools – confined basin depressions with water for two or more continuous months in the spring and/or summer, for which evidence of one of more of the following obligate vernal pools species: wood frogs (*Rana sylvatica*), mole salamanders (*Ambystoma* spp), and fairy shrimp (*Eubbranchipus* 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. (See MA NHESP “ Guidelines for Certification of Vernal Pools” for further clarification.)
- ⁵ **Navigable Waters of the United States:** Waters that are subject to the ebb and flow of the tide and Federally designated navigable rivers (the Merrimack River, Connecticut River, and Charles River to the Watertown Dam in Massachusetts) (Section 10 Rivers and Harbors Act of 1899). The jurisdictional limits are the mean high water (MHW) line in tidal waters and the ordinary high water (OHW) line in non-tidal portions of the Federally designated navigable rivers. For the purposes of this PGP, the area between the MHW and the high tide line (HTL), and the bordering and contiguous wetlands to tidal waters are also regulated as navigable waters. A bordering wetland is immediately next to its adjacent waterbody and may lie at, or below, the ordinary highwater 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 highwater mark and above the normal hydrologic influence of their adjacent waterbody. Note, with respect to the Federally designated navigable rivers listed above, the wetlands bordering and contiguous to the tidally influenced portions of those rivers are regulated under “B. Navigable Waters.”
- ⁶ **Special Aquatic Sites:** Include wetlands and saltmarsh, mudflats, riffles and pools, and vegetated shallows.
- ⁷ **Boating Facilities:** Facilities that provide, rent, or sell mooring space, such as marinas, yacht clubs, boat clubs, town facilities, dockominiums, etc.
- ⁸ **Horizontal limits:** The outer edge of a Federal Navigation Project (FNP). Contact the Corps of Engineers for information on FNP’s.
- ⁹ **Vegetated Shallows:** Subtidal areas that support rooted aquatic vegetation such as eelgrass.
- ¹⁰ **Structures:** The height of structures shall at all points be equal to or exceed the width of the deck. For the purpose of this condition, height shall be measured from the marsh substrate to the bottom of the longitudinal support beam.
- ¹¹ **Cape Cod Canal:** The Individual Permit area begins approximately 1,000 feet West of the Cape Cod Canal vertical lift railroad bridge and continues westerly approximately 3,000 feet along the center line of the channel to the end of the area (NOAA Reference Chart 13236).
- ¹² 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. Minimal includes, but is not limited to, fewer piles, less decking shading waters, less fill. Additional decking, piles or fill (includes bulkhead replacement forward of the existing bulkhead) aren’t allowed in Category 1.