

The following information is intended to aid in determining what may/may not require a permit from the U.S. Army Corps of Engineers (USACE) following the recent storm damage in Rhode Island. We strongly advise the public to contact us with any questions regarding permitting:

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A majority of work within waters of the U.S. (WOTUS) following the recent storm events is expected to qualify for verification under one or more activities authorized by the Rhode Island General Permits (GPs), unless otherwise exempt. WOTUS include, but are not limited to, lakes/ponds, rivers, streams, intermittent streams, natural drainage courses, ocean and wetlands. The Rhode Island GPs are available at: <https://www.nae.usace.army.mil/Missions/Regulatory/State-General-Permits/Rhode-Island-General-Permit/>. Additional information regarding the New England District Regulatory Program and submittal of a permit application (as applicable) can be found at: <https://www.nae.usace.army.mil/Missions/Regulatory.aspx>

The following apply for work in WOTUS:

- **Structures located in or over navigable waters:** Permits are required for work or structures in or over navigable waters pursuant to Section 10 of the Rivers and Harbors Act of 1899. Navigable waters are defined as those waters that are subject to the ebb and flow of the tide and/or are presently used or have been used in the past or may be susceptible for use to transport interstate or foreign commerce (33 CFR 329.4). Navigable Waters of the United States in Rhode Island are all waters that are subject to the ebb and flow of the tide.
- **Discharge of dredged or fill material:** The discharge of fill material into waters of the U.S. requires a permit under Section 404 of the Clean Water Act (CWA), unless otherwise exempt. Many activities to remediate storm damage may be exempt from permitting under the CWA if they involve returning sites to pre-disaster conditions (for example, replacing rip rap within areas that were previously stabilized with rip rap).
- **Exemptions:** In accordance with 33 CFR 323.4(a)(2), any discharge of dredged or fill material that may result from any of the following activities is not prohibited by or otherwise subject to regulation under Section 404 of the CWA: “Maintenance, including emergency reconstruction of recently damaged parts, of currently serviceable structures such as dikes, dams, levees, groins, riprap, breakwaters, causeways, bridge abutments or approaches, and transportation structures. Maintenance does not include any modification

that changes the character, scope, or size of the original fill design. This exemption does not apply to activities located in the navigable WOTUS listed above, which may require authorization pursuant to Section 10 of the Rivers and Harbors Act.

- No permit is required for maintenance, repair, or replacement of moorings or pile-supported structures including floats, stairs/pads, and boat/float lifts as well as other miscellaneous structures within inland, non-coastal, non-navigable waters if there is no discharge of dredged or fill material.
- Sediment and debris removal to restore sites to pre-flood conditions may not require a permit if there is **no** associated discharge of fill material and the work does not occur within navigable waterways.
- **Self-Verification:** New impacts to WOTUS that are not Section 10 waters may be eligible for Self-Verification under the GP (i.e., an application is not required) if the activity meets the thresholds, and terms and conditions of the GPs starting on page 43.
- **GP authorized activities:** Certain flood response activities within WOTUS may qualify for verification of one or more of the following GPs:
  - GP 1. Aids to navigation & temporary recreational structures
  - GP 2. Repair or maintenance of existing currently serviceable, authorized, or grandfathered structures & fills and removal of structures
  - GP 3. Moorings
  - GP 4. Pile-supported structures and floats, including boat lifts/hoists & other miscellaneous structures and work
  - GP 7. Dredging, disposal of dredged material, beach nourishment & rock removal and rock relocation
  - GP 9. New shoreline and bank stabilization projects and living shorelines
- **Standard Permits:** In cases where proposed work is not exempt, and does not qualify for one or more GPs, a standard permit may be required. You may apply for a standard permit by submitting a completed ENG 4345, which can be accessed, here: <https://www.usace.army.mil/Missions/Civil-Works/Regulatory-Program-and-Permits/Obtain-a-Permit/>
- **Records:** We strongly advise that you properly document and maintain records that may be useful for evaluating your permit request, including photos. Taking before/after photos and sketching existing/proposed conditions is highly recommended. Please note the before/after footprint of fill, and document the length or rip rap/stabilization and the pre- and post- size of structures replaced.

**The Rhode Island Permits Section team remains poised to assist you with your permitting needs or questions. Please do not hesitate to contact us.**