

CENAE-RDP
File No. NAE-2005-01142

June 5, 2017

MEMORANDUM THRU:

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Date: 2017.06.05 09:13:21 -0400

Frank DelGiudice, Chief, Permits and Enforcement Branch C

Jennifer McCarthy, Chief, Regulatory Division *JLM*

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Julie Byars, Assistant District Counsel, Office of Counsel

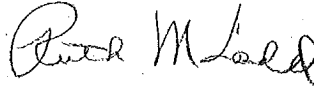
John Astley, District Counsel, Office of Counsel *JB for J. Astley*

FOR: COL Barron, District Commander

SUBJECT: New Hampshire's In-Lieu Fee Program – Amendment #1

1. Attached is the New Hampshire In-Lieu Fee Program, known as the New Hampshire Aquatic Resource Mitigation Fund (ARM Fund), Amendment #1, which I recommend you sign. The ARM Fund Instrument is between the New Hampshire Department of Environmental Services (“NHDES”) and the New England District (“Corps”). The Instrument was signed by the Corps on May 8, 2012 and NHDES on May 17, 2012.
2. This Amendment makes minor modifications to: Section I by removing reference to the Memorandum of Understanding and adding an additional cooperating agency; Section II to add reference to statutory revisions passed since the original instrument was signed with URLs added; Section IV by adding an additional cooperating agency to the Interagency Review Team; Section V to reference annual reports; Section VI.A to update the Wildlife Action Plan version and to add a Site Selection Committee member; change the original Section IX to Section X, and to add a new Section IX “Provision of Legal Responsibility” mandated by Regulatory at Headquarters to address a concern raised by a lawsuit. Any new instrument or amendment to an existing instrument must add this language.
3. This Amendment is compliant with 33 CFR Part 332, Compensatory Mitigation for Losses of Aquatic Resources; Final Rule dated April 10, 2008. This is also known as the “Mitigation Rule.”
4. The change in this Amendment is not significant and qualifies for the streamlined instrument modification review process described in the Mitigation Rule [33 CFR 332.8(g)(2)]. An endorsement has been prepared for your determination to utilize this streamlined instrument modification review process.
5. The members of the current IRT (the Corps, US Environmental Protection Agency, US Fish and Wildlife Service, and National Marine Fishery Service) were notified on April 4, 2017 by email of the Corps’ intent to use the streamlined review process and all had 30 days to review

and comment on the Amendment. No comments were received other than to say it was acceptable. As required by the Mitigation Rule, each received an opportunity to engage in a dispute resolution process if they disagreed with the Corps' intent to modify the instrument. None of the agencies invoked that right.



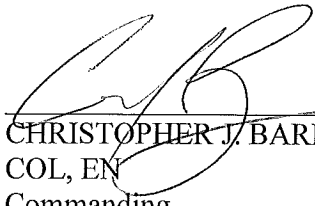
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Ruth M. Ladd
Chief, Policy Analysis & Technical Support Branch
Regulatory Division

Attachments: 33 CFR 332.8 (g) (2) Determination
Amendment #1 to the New Hampshire Aquatic Resource Mitigation Fund In-Lieu
Fee Program Instrument

33 CFR 332.8 (g) (2) Determination

Based upon the foregoing, I have determined that the attached amendment qualifies for the streamlined instrument modification review process at 33 CFR 332.8 (g) (2).



CHRISTOPHER J. BARRON
COL, EN
Commanding

Date: 8 JUN 2017

