

MASSACHUSETTS GENERAL PERMITS MODIFICATION

Christine Jacek
Acting Chief, Massachusetts Permitting &
Enforcement Branch
New England District
Regulatory Division
Date: December 10, 2020



US Army Corps
of Engineers®



OVERVIEW

- Current MA General Permits (MA GPs) were issued on April 16, 2018, and expire on April 5, 2023.
- Modification is currently being routed for review and signature. We'll issue a public notice when it goes into effect.
- Modification will not change the current GP's expiration date.
- Changes will update outdated info, correct errors, resolve discrepancies, provide clarification, and obtain info to make the permit review process more efficient.
- No major changes are proposed.
- This presentation includes many of the changes, however, it is not intended to capture ALL changes to the GP.



Applicant: General Public in Massachusetts

Effective Date: April 16, 2018

Modified Date: December XX, 2020

Expiration Date: April 5, 2023

Department of the Army
General Permits for the Commonwealth of Massachusetts

The New England District of the U.S. Army Corps of Engineers (Corps) hereby issues General Permits (GPs) for activities subject to Corps jurisdiction in waters of the U.S., including navigable waters, within the boundaries of, and off the coast of, the Commonwealth of Massachusetts, excluding work within the boundaries of Indian tribal lands. These GPs are issued in accordance with Corps regulations at 33 CFR Parts 320-332 (see 33 CFR 325.2(e)(2)). The GPs will protect the aquatic environment and the public interest while effectively authorizing activities that have no more than minimal individual and cumulative adverse environmental effects. This document supersedes the February 4, 2015 GPs.

This GP document contains the following sections:	<u>Page</u>
I. General Criteria	1
II. Jurisdiction/Authorities to Issue Permits	2
III. Eligible Activities	3
IV. General Conditions	19
V. Self-Verification Notification Form	34
VI. Content of Preconstruction Notification	36
VII. Definitions and Acronyms	40
VIII. Contacts and Tribal Areas of Concern	47
IX. Historic Property Notification Form	49



Proposed Changes to the Massachusetts General Permits



GP 3: STRUCTURES IN NAVIGABLE WATERS



GP 3. Structures in Navigable Waters of the U.S. (Authority: §10)

New, expansions, reconfigurations or modifications of structures in navigable waters of the U.S. including pile and pole-supported piers, floats, stairs, shore out hauls, and boat and float lifts.

Not authorized under GP 3 (IP required): (a) Structures associated with a new boating facility; (b) Structures in a Corps ~~FNP~~**Federal anchorage or channel**; or (c) Artificial reefs

Self-Verification Eligible	PCN Required
<p>1. Private, non-commercial piers, floats and lifts that meet <u>all</u> of the following terms:</p> <ul style="list-style-type: none"> a. Piers span ≤ 75 feet over salt marsh and are ≤ 4 feet wide and ≥ 4 feet above the marsh substrate (the height is measured from the marsh substrate to the bottom of the lowest longitudinal support); and b. Floats and lifts in tidal waters and non-tidal navigable waters of the U.S. are ≥ 18 inches above the substrate during all tidal cycles. Skids can only be used in areas where pilespile-supported float stops are not feasible and on sandy or hard bottom substrates; and c. Piers and floats in: (i) Tidal waters total ≤ 600 SF combined; and (ii) Non-tidal navigable waters of the U.S. total ≤ 300 SF combined; and d. Piers, floats and lifts: (i) Are ≥ 25 feet from previously mapped or existing vegetated shallows, or riparian property line extensions; and (ii) Extend $\leq 25\%$ of the waterway width or ≤ 75 feet waterward from OHW in non-tidal navigable waters of the U.S. or mean high water (MHW). See Note 1. <p>2. Fenders and similar structures.</p>	<ul style="list-style-type: none"> 1. Shore out hauls; or 2. Expansions, modifications, or new reconfiguration zones at any authorized boating facility; or 3. New, expansions, reconfigurations, reconfiguration zones, or modifications of structures that provide public, community or government recreational uses such as boating, fishing, swimming, access, etc.; or 4. Miscellaneous structures; or 5. Structures that are not SV eligible and do not require an IP.

Notes:

- 1. See www.nae.usace.army.mil/missions/regulatory/useful-documents-forms-and-publications >> Structure Placement in Navigable Waterways for guidance.
- 2. GC 11, Pile Driving and Removal, is particularly relevant.



GP 7: BANK AND SHORELINE STABILIZATION



GP 7. Bank and Shoreline Stabilization (Authorities: §§10 & 404)

Bank and shoreline stabilization activities in waters of the U.S. necessary for erosion control or prevention, such as vegetative stabilization, sills, rip rap, revetment, gabion baskets, stream barbs, and bulkheads, or combinations of techniques (e.g., living shorelines), provided the activity meets all of the following criteria: (a) No material is placed in excess of the minimum needed for erosion protection; (b) No material is of a type, or is placed in any location, or in any manner, that will impair surface water flow into or out of any waters of the U.S.; and (c) No material is placed in a manner that will be eroded by normal or expected high flows (properly anchored native trees and treetops may be used in low energy areas).

Not authorized under GP 7 (IP required): (a) Bank stabilization >500 feet in total length, including both opposite stabilized stream banks, in streams, unless the Corps waives this criterion by making a written determination concluding that the discharge will result in no more than minimal adverse effects; (b) Stream channelization or relocation activities; or (c) Breakwaters, groins or jetties.

Self-Verification Eligible ¹	PCN Required ¹
<p>Activities in non-tidal waters that meet all of the following terms:</p> <ul style="list-style-type: none"> a. ≤100 feet in length including both stream banks; or ≤100 feet in length on each side of the stream bank when necessary to protect transportation infrastructure; and b. ≤1 cubic yard of fill per linear foot average along the bank waterward of the plane of OHW; and c. The slope of the structure is more gradual than 1V:3H in lakes/ponds; and 1V:1H in non-tidal streams; and d. No impacts to SAS. 	<ul style="list-style-type: none"> 1. Activities in non-tidal waters that are: <ul style="list-style-type: none"> a. >100 feet to ≤500 feet in length including both stream banks; or >100 feet in total length on each side of the stream bank and ≤500 feet including both stream banks when necessary to protect transportation infrastructure; or b. >1 cubic yard of fill per linear foot average along the bank waterward of the plane of OHW; or c. The slope of the structure is steeper than 1V:3H in lakes/ponds; and 1V:1H in non-tidal streams; or d. Impacts to SAS; or 2. The activity is located in tidal waters; or 3. Bulkheads, seawalls or similar structures for maritime activities; or 4. Activities in the Connecticut River from the Turners Falls Dam to the MA/CT border, or Merrimack River from the Essex Dam to the mouthhead of tide, involving permanent or temporary impacts unless they are performed: (a) <5 feet waterward from OHW or HFL and in the dry; or (b) from Sep. 1 to Oct. 14. This is to protect endangered species; or 5. Activities that are not eligible for SV and do not require an IP.

Note: See GP 1 for information on the replacement or maintenance of existing, currently serviceable structures.



GP 14: TEMPORARY CONSTRUCTION ACCESS



GP 14. Temporary Construction, Access, and Dewatering (Authorities: §§10 and 404)
 Temporary structures, work, and discharges, including cofferdams, necessary for construction activities or access fills of **dewatering of construction sites** that are not authorized under another GP activity.

Not authorized under GP 14 (IP required): (a) Permanent structures or impacts; (b) Temporary impacts in tidal waters that are >1 acre; >5000 SF in saltmarsh, mud flats, or riffle and pool complexes; or >1000 SF in vegetated shallows (see exception in Note 3 below); (c) Use of cofferdams to dewater wetlands or other aquatic areas to change their use; (d) Temporary stream crossings (see GPs 8 - 10); (e) Structures or fill left in place after construction is completed.

Self-Verification Eligible	PCN Required
Activities that meet all of the following terms: 1. Impacts in non-tidal waters of the U.S. that are: (a) ≤5000 SF; and (b) not located in vegetated shallows or riffle and pool complexes (see exception in Note 2); and 2. Impacts in tidal waters that are: (a) ≤5000 SF; and (b) not located in SAS; and 3. Structures in navigable waters of the U.S. provided no impacts occur in tidal SAS and they are left in place ≤30 days.	1. Impacts in non-tidal waters of the U.S. that are: (a) >5000 SF; or (b) located in vegetated shallows or riffle and pool complexes (see exception in Note 2); or 2. Impacts in tidal waters of the U.S. that are: (a) >5000 SF; or (b) located in SAS (see Note 3); or 3. Activities in the Connecticut River from the Turners Falls Dam to the MA/CT border, or Merrimack River from the Essex Dam to the mouth, involving temporary impacts unless they are performed: (a) <5 feet waterward from OHW or HTL and in the dry ; or (b) from Sep. 1 to Oct. 14. This is to protect endangered species; or 4. Activities not eligible for SV and do not require an IP.
Notes: 1. Turbidity or sediment resuspension is generally not considered to occur when properly using management techniques to work in dry conditions. PCNs must include plans to demonstrate this. 2. Temporary construction mats placed in an area of any size in non-tidal waters of the U.S. do not count towards the SV or PCN/GP area thresholds (see GCs 3(a), 13 and 14). This only applies to temporary construction mats, not other temporary fill. 3. Temporary construction mats in tidal SAS or >5000 SF in tidal waters require a PCN, but mats placed in an area of any size do not count towards the PCN/GP area thresholds (see GCs 3(a), 13 and 14). This only applies to temporary construction mats, not other temporary fill. 4. The placement of cofferdams constitutes a discharge of fill material per 33 CFR 323.3(c)(1).	



GP 23: AQUATIC HABITAT RESTORATION



GP 23. Aquatic Habitat Restoration, Enhancement, and Establishment Activities (Authorities: §§10 and 404)
 Activities in waters of the U.S. associated with the restoration, enhancement and establishment of non-tidal and tidal wetlands and riparian areas, the restoration and enhancement of non-tidal streams and other non-tidal open waters; the relocation of non-tidal waters, including non-tidal wetlands and streams, on the project site; the restoration and enhancement of shellfish, finfish and wildlife habitat; and the rehabilitation or enhancement of tidal streams, tidal wetlands and tidal open waters; provided those activities result in net increases in aquatic resource functions and services. To be authorized by this GP, the activity must be planned, designed, and implemented so that it results in aquatic habitat that resembles an ecological reference. An ecological reference may be based on the characteristics of an intact aquatic habitat or riparian area of the same type that exists in the region, or based on a conceptual model developed from regional ecological knowledge of the target aquatic habitat type or riparian area.

To the extent that a Corps permit is required, Activities authorized by this GP include, but are not limited to: the removal of accumulated sediments; the removal, installation, and maintenance of small water control structures, dikes, and berms, as well as discharges of dredged or fill material to restore appropriate stream channel configurations after small water control structures, dikes, and berms, are removed; the installation of current deflectors; the enhancement, restoration, or establishment of riffle and pool stream structure; the placement of in-stream habitat structures; modifications of the stream bed and/or banks to restore or establish stream meanders; the backfilling of artificial channels; the removal of existing drainage structures, such as drain tiles, and the filling, blocking, or reshaping of drainage ditches to restore wetland hydrology; the installation of structures or fills necessary to establish or re-establish wetland or stream hydrology; the construction of small nesting islands; the construction of open water areas; the construction of oyster habitat over unvegetated bottom in tidal waters; shellfish seeding; activities needed to reestablish vegetation, including plowing or discing for seed bed preparation and the planting of appropriate wetland species; re-establishment of submerged aquatic vegetation in areas where those plant communities previously existed; re-establishment of tidal wetlands in tidal waters where those wetlands previously existed; mechanized land clearing to remove non-native invasive, exotic, or nuisance vegetation; and other related activities. Only native plant species may be planted at the site.

Not authorized under GP 23 (IP required): Stream channelization activities or artificial reefs.

Self-Verification Eligible ¹	PCN Required ¹
1. Permanent or temporary impacts in non-tidal waters of the U.S. that are ≤5000 SF; and 2. Eelgrass or salt marsh planting and transplanting ≤100 SF in tidal waters; and -Shellfish seeding without cultch or spatted shell.	1. Permanent or temporary impacts in non-tidal waters of the U.S. that are >5000 SF; or 2. Permanent or temporary impacts or structures <u>are located in</u> tidal waters of the U.S. including cultch or spatted-shell placement; or 3. Eelgrass or salt marsh planting and transplanting >100 SF in tidal waters; or 4. Permanent water impoundments, dam removal or fish ladders; or 5. Stream relocation, impoundment, or loss of streambed occurs; or 6. The conversion of: (a) a stream or natural wetlands to another aquatic habitat type (e.g., stream to wetland or vice versa, wetland to pond, etc.) or uplands, (b) one wetland type to another (e.g., forested wetland to an emergent wetland). See Note 2, or 7. Activities in the Connecticut River from the Turners Falls Dam to the MA/CT border, or Merrimack River from the Essex Dam to the mouthhead of tide, involving permanent or temporary impacts unless they are performed: (a) <5 feet waterward from OHW or HFL and <u>in the dry</u>; or (b) from Sep. 1 to Oct. 14. This is to protect endangered species; or 8. Activities that are not eligible for SV and do not require an IP.
Activities 1 and 2 above must be authorized by a Final Order of Conditions, or 401 WQC if required, in order to be SV eligible.	



GENERAL CONDITION 5



5. Activities Affecting Structures or Works Built by the United States

- a. If a GP activity also requires permission from the Corps pursuant to 33 U.S.C. 408 because it will alter or temporarily or permanently occupy or use a Corps federally authorized Civil Works project (including, but not limited to, a levee, dike, floodwall, channel, anchorage, turning basin, maneuvering area, seawall, bulkhead, breakwater, jetty, wharf, pier or other work built, but not necessarily owned, by the United States), the prospective permittee must submit a PCN. The Regulatory Division will assist the proponent with contacting the appropriate Corps district office for work in the vicinity of FNP, Corps properties and/or Corps-controlled easements, flood control projects, etc. An activity that requires §408 permission is not authorized by these GPs until the appropriate Corps district office issues the §408 permission to alter, occupy, or use the Corps project, and the Corps issues a written GP verification.
- b. A PCN is required for GP activities within, or with any secondary or indirect adverse environmental effects on, any National Wildlife Refuge, National Forest, National Marine Sanctuary (e.g., Stellwagen Bank), National Park or any other area administered by the National Park Service (e.g., Cape Cod National Seashore), U.S. Fish and Wildlife Service (USFWS) or U.S. Forest Service (USFS).



GENERAL CONDITION 8



8. Wild and Scenic Rivers

- a. The following activities in designated river or study river segments in the National Wild and Scenic River (WSR) System require a PCN unless the National Park Service has determined in writing to the proponent that the proposed work will not adversely affect the WSR designation or study status:
 - i. Activities that occur in WSR segments, in and 0.25 miles up or downstream of WSR segments, or in tributaries within 0.25 miles of WSR segments;
 - ii. Activities that occur in wetlands within 0.25 miles of WSR segments;
 - iii. Activities that have the potential to alter free-flowing characteristics in WSR segments.
- b. As of **April 16, 2018** ~~DATE~~, the National Wild and Scenic Rivers System segments in Massachusetts include are the Taunton River, Sudbury, Assabet, Concord Rivers, ~~and~~ Westfield River, and the Nashua, Squannacook and Nissitissit Rivers are designated rivers, and the Nashua River is a study river. The most up to date list and descriptions of the WSR segments are provided at www.nae.usace.army.mil/missions/regulatory/state-general-permits/massachusetts-general-permit ~~Wild and Scenic Rivers~~ www.rivers.gov/massachusetts.php.



SELF-VERIFICATION FORM CHANGE



Non-Federal permittees, have you confirmed that there are no **endangered or threatened listed** species or designated critical habitat **listed pursuant to the Federal Endangered Species Act** that might be affected or if the activity is located in designated critical habitat? See GC 10(b) on page 23. You must attach an **Official Species List** generated at <http://ecos.fws.gov/ipac> to this SVNF.

Yes No



ADDITION OF HIGH TIDE LINE DEFINITION



Frac out: During normal drilling operations, drilling fluid travels up the borehole into a pit. When the borehole becomes obstructed or the pressure becomes too great inside the borehole, the ground fractures and fluid escapes to the surface.

High Tide Line (HTL): The line of intersection of the land with the water's surface at the maximum height reached by a rising tide. The HTL may be determined, in the absence of actual data, by a line of oil or scum along shore objects, a more or less continuous deposit of fine shell or debris on the foreshore or berm, other physical markings or characteristics, vegetation lines, tidal gages, or other suitable means that delineate the general height reached by a rising tide. The line encompasses spring high tides and other high tides that occur with periodic frequency but does not include storm surges in which there is a departure from the normal or predicted reach of the tide due to the piling up of water against a coast by strong winds such as those accompanying a hurricane or other intense storm.



CHANGES TO HISTORIC AGENCY CONTACTS



3. Historic Resources:

- a. Massachusetts Historical Commission (MHC)
The Massachusetts Archives Bldg.
220 Morrissey Boulevard
Boston, MA 02125
(617) 727-8470 (phone); (617) 727-5128 (fax)
Area of concern: The entire Commonwealth of Massachusetts

- b. Massachusetts Board of Underwater Archaeological Resources (BUAR)
251 Causeway Street, Suite 800
Boston, MA 02114
david.s.robinson@mass.gov; (617) 626-~~1144~~1014 (phone); (617) 626-1240 (fax);
david.s.robinson@state.ma.us/victor.mastone@state.ma.us
Area of concern: All Massachusetts lakes, ponds, rivers and navigable waters.

- c. Tribal Historic Preservation Officers (THPOs)

Tribal Historic Preservation Officer
Wampanoag Tribe of Gay Head (Aquinnah)
20 Black Brook Road
Aquinnah, MA 02535 term2@wampanoagtribe-nsn.gov
thpo@wampanoagtribe-nsn.gov and tcrm2@wampanoagtribe-nsn.gov; (508) 645-9265, x175 (phone);
(508) 645-3790 (fax); thpo@wampanoagtribe-nsn.gov betтина@wampanoagtribe-net
Area of concern: The entire Commonwealth of Massachusetts

Tribal Historic Preservation Officer
Mashpee Wampanoag Tribe
483 Great Neck Road South
Mashpee, MA 02649
106Review@mwtribe-nsn.gov; (508) 477-0208, x101 (phone); (508) 477-1218 (fax);
106Review@mwtribe-nsn.gov
Area of concern: The entire Commonwealth of Massachusetts

Tribal Historic Preservation Officer
Stockbridge-Munsee Mohican Tribal Historic Preservation, New York OfficeCommunity
nathan.allison@mohican-nsn.gov; 65-1st Street
Troy, NY 12180
(518) 244-3164 (phone); bonney.hartley@mohican-nsn.gov
Area of concern: Berkshire, Hampden, Franklin, and Hampshire counties West of the Connecticut
River and Northfield, Montague, Miller's Falls, Turner's Falls, Sunderland, Amherst, Hadley, South
Hadley, Chicopee, Springfield and Longmeadow.



CHANGES TO AREA OF INTEREST FOR THE NARRAGANSETT TRIBE



Tribal Historic Preservation Officer
Narragansett Indian Tribe
13 George Street
Westerly, RI 02891

(send to both)

Tribal Historic Preservation Officer
Narragansett Indian Tribe
4425-A South County Trail
Charlestown, RI 02813

tashtesook@aol.com; (401) 585-0142 (cell)

Area of concern: All of the cities and towns in Massachusetts except for Nantucket, Dukes County and Barnstable County. However, the Nauset area of Eastham is within the area of concern.