



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

PUBLIC NOTICE

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REISSUANCE OF THE DEPARTMENT OF THE ARMY MASSACHUSETTS PROGRAMMATIC GENERAL PERMIT (PGP)

The New England District, U.S. Army Corps of Engineers, 696 Virginia Road, Concord, MA 01742-2751 hereby announces the reissuance of the statewide Massachusetts General Permit (GP), pursuant to 33 CFR Part 325.5(c)(3), for minimal-impact activities within the Commonwealth of Massachusetts. The existing PGP expired on January 20, 2010. The reissued Massachusetts GP continues the expedited review process for activities in Corps jurisdiction under Section 404 of the Clean Water Act, Section 10 of the Rivers and Harbors Act of 1899 and Section 103 of the Marine Protection, Research, and Sanctuaries Act. This public notice is issued in accordance with 33 CFR 325.10 to ensure potential applicants for permits are informed of the requirements of 33 CFR 320-330 and of the steps required to obtain permits for activities in waters of the U.S. or ocean waters.

General permits are encouraged under the President's plan to streamline state and Federal regulatory programs. The New England District has already had success with streamlining these programs through the use of general permits throughout New England. This GP is designed to authorize activities formerly covered under the Nationwide Permit (NWP) program and the prior PGP that expired on January 20, 2010. This reissued GP became effective on January 21, 2010. Continued utilization of the general permit process in place of the NWP's will provide important benefits to the public, including simplifying the process, expediting decisions, and providing necessary environmental protection.

Projects with minimal individual and cumulative effects on the aquatic environment will be approved administratively under this GP. Projects that do not meet the terms and conditions of this GP, of which General Condition 3 requires projects authorized by the GP to have minimal individual and cumulative adverse environmental impacts, will be subjected to Individual Permit review. The Individual Permit review procedures are not altered by the GP. Federal exemptions, which are not necessarily the same as the Commonwealth's exemptions, are also not altered by the GP. In addition, for projects authorized pursuant to this GP, project proponents must obtain the appropriate local or state approvals when required in order for this GP authorization to be valid. All GP authorizations will be subject to the applicability requirements, procedures, and conditions contained in the GP document.

Project eligibility under this GP will fall into two categories: Category 1 (no application required) and Category 2 (application required). The Corps will review Category 2 activities along with state and federal resource agencies (U.S. Fish and Wildlife Service, U.S. Environmental Protection Agency and National Marine Fisheries Service) as applicable. Through project review, the Corps will determine if

the individual and cumulative adverse environmental impacts for Category 2 projects are minimal and whether the project may proceed under the GP.

In Appendix A of the GP, in the Miscellaneous categories for “Inland Waters and Wetlands” and “Navigable Waters,” Category 1 authorizes “Any work not commenced nor completed that was authorized in a written letter from the Corps under the PGP in effect between December 18, 2006 and January 20, 2010.” Please see Appendix A for more information.

As noted in General Condition 7, we are required to ensure compliance with Section 106 of the National Historic Preservation Act. If there is a potential to effect an historic property, consultation with the State Historic Preservation Office (SHPO) and the Tribal Historic Preservation Offices (THPOs) is required. The National Park Service recently designated Nantucket Sound as eligible for listing on the National Register of Historic Places. Any jurisdictional work in waters of Nantucket Sound may have the potential to affect the historic or cultural values. General Condition 7 requires that project proponents submit an application for all projects that would otherwise qualify for Category 1 if there is the potential for an effect on any known historic property. Historic properties include those that are eligible for inclusion, but not necessarily listed on the National Register. Any work located within Nantucket Sound will now require written authorization from the Corps. As this is a very recent determination by the Keeper of the National Register, the review requirements and procedures are likely to evolve over the next several months. If possible, we will work with the SHPO and THPOs to develop alternate procedures to expedite the review of specific types of work that is not likely to adversely affect this historic property.

Some of the major changes to the GP include:

Eligibility Criteria:

Proponents for Category 1 projects must now provide the Category 1 Form (Appendix C) to the Corps before starting the work authorized by this GP.

Applying for a Permit:

1. As stated on Page 3 of the GP, all applicants for Category 2 projects must now:
 - Apply to either the Corps OR MassDEP as appropriate.
 - Submit the SHPO/MHC’s “Project Notification Form” to the SHPO/MHC, BUAR, and the four Native American tribes when applicable.
2. The Information Required Checklist Appendix D is now required.

General Condition 3

This general condition (GC) requires secondary impacts to waterway and/or wetland areas, (e.g., areas drained, flooded, cleared, excavated or fragmented) to be added to the total fill area when determining the project review category (Category 1, 2 or Individual Permit review). Direct, Indirect, Secondary, and Cumulative Impacts/Effects are defined at Appendix A, Endnote 2.

General Condition 5

This GC now states “When determining the review category in Appendix A (Category 1, 2 or Individual Permit) for a single and complete project, proponents must include any permanent historic

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fill placed since August 1993 that is associated with that project and all currently proposed temporary and permanent impact areas.”

General Condition 9

The segment of the Taunton River that was previously under congressional study as a potential addition is now a National Wild and Scenic Rivers System segment.

General Condition 10

In accordance with GC 10, no activity may be authorized under Category 1 if a listed species or critical habitat is present in the action area. Project proponents must check the U.S. Fish and Wildlife Service and National Marine Fisheries Service websites provided at Appendix F.

General Condition 11

Work in streams in the Connecticut and Merrimack River watersheds that are stocked with Atlantic salmon are now authorized under Category 1 provided the work will not be conducted during the time of year restrictions stated in the Massachusetts Division of Marine Fisheries time of year restrictions document.

General Condition 16

Changes were made regarding the operation of heavy equipment in wetlands.

General Condition 17

Changes were made to this condition regarding temporary fill, including time limits for the placement of temporary fill.

General Condition 20

The condition for Coastal Bank Stabilization was renamed and now addresses bank stabilization in coastal and inland waters.

General Condition 21

Several changes were made to this condition regarding stream crossings. Water diversions may be used immediately up and downstream of the work footprint for Category 1 work. The time of year work windows and restrictions changed.

General Condition 22

This condition was added to separate wetlands crossings from stream crossings. Recommended standards are provided.

General Condition 24

To qualify for Category 1, inland and navigable water construction work may not be conducted during the time-of-year restrictions for any *present* species specified in the Massachusetts Division of Marine Fisheries (MA DMF) TOY restriction document. The TOY restriction for any inland stream not specified in the MA DMF document is October 1 to June 30 (see GC 21(m)).

General Condition 27

This new condition regarding invasive species was added. All applications for Category 2 inland projects proposing fill in Corps jurisdiction shall include an Invasive Species Control Plan (ISCP). See Appendix F.

General Condition 37

This new condition was added, providing information on the transfer of GP verifications.

Appendix A, Inland Waters and Wetlands, (a) New Fill Excavation Discharges

1. We added an allowance for construction mats in Category 1.
2. Thresholds for vernal pool and vernal pool buffers were added to Category 1.
3. We now require a Category 2 review for the discharge of accumulated bottom sediment from or through a dam into downstream waters.
4. The following is now allowed in Category 2: Temporary structures, work, and discharges ≥ 5000 SF necessary for construction activities or access fills or dewatering of construction sites, provided that the associated primary activity is authorized by the Corps or not subject to Corps regulation.

Appendix A, Inland Waters and Wetlands, (c) River/Stream/Brook Work and Crossings and Wetland Crossings.

This new activity was added.

Appendix A, Inland Waters and Wetlands, (e) Miscellaneous

This was added for work previously authorized:

“Any work not commenced nor completed that was authorized in a written letter from the Corps under the PGP in effect between December 18, 2006 and January 20, 2010. The terms and general conditions of this GP apply along with any special conditions in the written authorization.”

Appendix A, Navigable Waters, (c) Dredging/Excavation and Associated Disposal

The time of year window of November 1 to January 15 was replaced with the time of year restrictions in the Massachusetts Division of Marine Fisheries “Marine Fisheries Time of Year (TOY) Restrictions for Coastal Alteration Projects” document.

Appendix A, Navigable Waters, (d) Moorings

Category 1 moorings may not be located in SAS⁶ (excluding vegetated shallows) unless conservation/eco-friendly moorings are used that prevent the chain/rope from resting or dragging on the bottom substrate.

Appendix A, Navigable Waters, (e) Pile-Supported Structures and Floats

1. Design requirements from the MassDEP’s “A Guide to Permitting Small, Pile-Supported Docks and Piers” were added for pile-supported structures to qualify for Category 1.
2. An Individual Permit is now required for the establishment of a marina reconfiguration zone.

Appendix A, Navigable Waters, (f) Miscellaneous

This was added for work previously authorized:

“Any work not commenced nor completed that was authorized in a written letter from the Corps under the PGP in effect between December 18, 2006 and January 20, 2010. The terms and general

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conditions of this GP apply along with any special conditions in the written authorization. This does not allow continued disposal of dredged material at the Massachusetts Bay Disposal Site.”

Endnotes/Definitions:

The endnote/definition for “Vernal Pools” was changed, while “Maintenance” and “Aquatic Habitat Restoration, Establishment and Enhancement” were added.

Appendix D

The Information Required Checklist was added. All applicants for Category 2 and Individual Projects must submit this checklist with their application to the MassDEP or Corps.

You can view the Massachusetts GP on our web site at www.nae.usace.army.mil/reg under State Programmatic General Permits” and then “Massachusetts.” Please contact Mr. Penta at (978) 318-8862 or gregory.r.penta@usace.army.mil for more information or a copy of the GP.


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Chief, Regulatory Division