

Permit No.: 1993-01040

Effective Date: March 1, 1995
Expiration Date: March 1, 2000

Applicant: General Public in Massachusetts

DEPARTMENT OF THE ARMY PROGRAMMATIC GENERAL PERMIT
COMMONWEALTH OF MASSACHUSETTS

The New England Division of the U.S. Army Corps of Engineers hereby issues a programmatic general permit that expedites review of minimal impact work in coastal and inland waters and wetlands within the Commonwealth of Massachusetts. Activities with minimal impacts, as specified by the terms and conditions of this general permit, are either non-reporting (provided required local and state permits and required state certifications are received), or are to be screened by the Corps and federal resource agencies for applicability under the general permit. The Corps individual permit review process, and activities exempt from Corps jurisdiction, are not affected by this general permit.

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); and 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).

Procedures

A. State and Local Approvals

For projects authorized pursuant to this general permit, when the following state approvals are also required, they must be obtained in order for this general permit 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 Wetlands Protection Act (WPA) (MGL c. 131 Section 40) must be obtained for activities subject to jurisdiction as defined in 310 CMR 10.02.

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

(c) **Water Quality Certification** is required for work in Corps jurisdiction involving a discharge to waters of the U.S. Some projects require an individual 401 water quality certification (WQC) issued by the Massachusetts DEP before work can proceed (see page 9 for 401 WQC requirements).

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

B. Corps Authorization: Category I (Non-Reporting)

Work in Massachusetts that is subject to Corps jurisdiction (see Condition 2 on page 3), that meets the definition of Category I on the Definition of Categories sheet (attached), and that meets all of this

permit's other conditions may proceed without application or notification to the Corps provided the required federal, state and local authorizations are obtained. Note that the review thresholds under Category I apply to single, complete projects only (see Condition 5). Also, note that Category I does not apply to activities occurring in a component of, or within 0.25 mile of a component of, the National Wild and Scenic River System (see Condition 9, and page 8 for listed rivers in Massachusetts).

Work that is not subject to the Massachusetts Wetlands Protection Act (WPA), but is subject to Corps jurisdiction, is eligible for Corps authorization under this PGP; although an Order of Conditions is not required, the general permit review thresholds and requirements concerning WQC and CZM consistency apply. Such projects could include activities that are exempt from the WPA, and activities in federal wetlands (e.g., isolated wetlands), that are not covered under the WPA.

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

C. Corps Authorization: Category II (Screening)

For projects that do not meet the non-reporting thresholds applicants are required to submit an application to the Corps for a case-by-case determination of applicability under this general permit (Category II). Category II projects may not proceed until written notification is received from the Corps, and the applicable certifications or waivers concerning water quality and coastal zone management (CZM) are received by the applicant. Applicants will be notified by the Corps if an individual CZM consistency concurrence is required. Note that Category II does not apply to activities occurring in a component of, or within 0.25 mile of a component of, the National Wild and Scenic River System (see Condition 9, and page 8 for listed rivers in Massachusetts).

For Category II projects, applicants filing a notice of intent (NOI) with their local Conservation Commission should submit a copy of their NOI materials to the Corps at the same time they apply to their Commission, along with additional information concerning the work within Corps jurisdiction (see below).

Category II applicants shall submit a copy of their application materials to the Historic Preservation Officer at the Massachusetts Historical Commission (MHC) to be reviewed for the presence of historic/archaeological resources in the permit area that may be affected by the proposed work. Applications to the Corps should include information to indicate that this has been done (applicant's statement or a copy of their cover letter to MHC).

The Corps will determine if Category II applications (1) require additional information (see below); (2) are appropriate for screening with the federal resource agencies (Environmental Protection Agency, U.S. Fish and Wildlife Service, and National Marine Fisheries Service); (3) are ineligible under the terms and/or conditions of this general permit; or (4) will require individual permit review, irrespective of whether the terms and conditions of this general permit are met, based on concerns for the aquatic environment or any other factor of the public interest (see Condition 4 on Discretionary Authority).

Additional information required may include:

- (a) purpose of the project;
- (b) 8 1/2" by 11" plan views of the entire property and project limits with existing and proposed conditions (legible, reproducible plans required);

- (c) wetland delineation for the site, information on the basis of the delineation, and calculations of waterway and wetland impact areas (see Condition 2 on page 3);
- (d) typical cross-section views of all wetland and waterway fill areas and wetland replication areas;
- (e) delineation of submerged aquatic vegetation, e.g., eelgrass beds, in tidal waters;
- (f) amount, type and source of fill material to be discharged into waters and wetlands, including the volume of fill below ordinary high water in inland waters, and below the high tide line in coastal waters;
- (g) mean low, mean high water and high tide elevations in navigable waters;
- (h) limits of any Federal navigation project in the vicinity and State Plane coordinates for the limits of the proposed work closest to the Federal project;
- (i) alternatives analyses submitted to the DEP for WQC review, and/or additional information compiled on alternatives;
- (j) for dredging projects include the volume of material and area in square feet to be dredged below mean high water, existing and proposed water depths, type of dredging equipment to be used, nature of material (e.g. silty sand), any existing sediment grain size and bulk sediment chemistry data for the proposed or any nearby projects, 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).

Additional information may be requested by the Corps; dredging applicants may be required to conduct a shellfish survey, and sediment testing, including physical, chemical and biological testing.

D. Corps Authorization: Category III (Individual Permit)

Work that is in Category III on the attached Definition of Categories sheet, or that does not meet the terms and conditions of this general permit, will require an application for an individual permit from the Corps of Engineers (see 33 CFR Part 325.1). The screening procedures outlined above will only serve to delay project review in such cases. The appropriate application materials (including either the NOI joint application form or the Corps application form) should be submitted by the applicant at the earliest possible date; general information and application forms can be obtained at (617) 647-8338. Individual water quality certification and coastal zone management consistency concurrence will be required.

E. Programmatic General Permit Conditions:

The following conditions apply to activities authorized under the Programmatic General Permit, including all Category I (non-reporting) and Category II (screening) activities:

GENERAL REQUIREMENTS:

1. Other Permits. Authorization under this general permit does not obviate the need to obtain other Federal, state, or local authorizations required by law.
2. Applicability of this general permit 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.
3. Minimal Effects. Projects authorized by this general permit 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 of Engineers retains discretionary authority to require review for an individual permit based on concerns for the aquatic environment or for any other factor of the public interest. This authority is invoked on a case-by-case basis whenever the Corps determines that the potential consequences of the proposal warrant individual 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 general permit is voided, and no work may be conducted until the individual Corps permit is obtained, or until the Corps notifies the applicant that further review has demonstrated that the work may proceed under this general permit.

5. Single and Complete Projects. This general permit 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. All planned phases of multi-phased projects shall be treated together as constituting one single and complete project. This general permit shall not be used for any activity that is part of an overall project for which an individual permit is required.

NATIONAL CONCERNS:

6. Historic Properties. Any activity authorized by this general permit 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 Office and the National Register of Historic Places. 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 Division Engineer.

7. National Lands. Activities authorized by this general permit 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).

8. Endangered Species. No activity is authorized under this general permit which 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 Endangered Species Act 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 (addresses attached, page 8).

9. Wild and Scenic Rivers. No activity is authorized under this general permit that occurs in a component of, or within 0.25 mile of a component of, the National Wild and Scenic River System, including rivers officially designated by Congress as study rivers for possible inclusion in the system, while such rivers are in an official study status. Current rivers that this applies to in Massachusetts are listed on page 8.

10. Federal Navigation Project. Any structure or work that extends closer to the horizontal limits of any Corps' navigation project than a distance of three times the project's authorized depth (see attached map for locations of these projects) shall be

subject to removal at the owner's expense prior to any future Corps' dredging or the performance of periodic hydrographic surveys.

11. 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.

12. 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.

MINIMIZATION OF ENVIRONMENTAL IMPACTS:

13. Minimization. Discharges of dredged or fill material into waters of the United States shall be avoided and minimized to the maximum extent practicable.

14. Work in Wetlands. Heavy equipment working in wetlands shall be avoided if possible, and if required shall be placed on mats to minimize soil and vegetation disturbance. Disturbed areas in wetlands shall be restored to preconstruction contours upon completion of the work. In many cases the mats are considered a discharge of fill material and must be included in the quantification of impact area, and authorized by this general permit.

15. Temporary Fill. Temporary fill in waters and wetlands authorized by this general permit (e.g. access roads, cofferdams) shall be properly stabilized during use to prevent erosion. Temporary fill in wetlands shall be placed on geotextile fabric laid on existing wetland grade. Temporary fills shall be disposed of at an upland site, suitably contained to prevent erosion and transport to a waterway or wetland. Temporary fill areas shall be restored to their original contours.

16. 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.

17. 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) No open trench excavation shall be allowed in flowing waters. (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 general permit). (d) For projects that otherwise meet the terms of Category I, instream construction work shall be conducted during the low flow period July 15 - October 1 in any year; projects that are not to be conducted during that time period are

ineligible for Category I and shall be screened pursuant to Category II, regardless of the waterway and wetland fill and/or impact area.

18. Discharge of Pollutants. All activities involving any discharge of pollutants into waters of the United States authorized under this general permit shall be consistent with applicable water quality standards, effluent limitations, standards of performance, prohibitions, and pretreatment standards and management practices established pursuant to the Clean Water Act (33 U.S.C. 1251), and 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 6 months of the effective date of such revision or modification, or within a longer period of time deemed reasonable by the Division 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 401 Water Quality Certification.

19. Spawning Areas. Discharges in fish and shellfish spawning or nursery areas during spawning seasons shall be avoided, and impacts to these areas shall be avoided or minimized to the maximum extent practicable during all times of year.

20. Storage of Seasonal Structures. Coastal structures such as pier sections, floats, etc., 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 salt marsh.

21. Environmental 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 is practicable, and to minimize any adverse impacts on, existing fish, wildlife, and natural environmental values.

PROCEDURAL CONDITIONS:

22. Inspections. The permittee shall permit the Division 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 Division Engineer may also require post-construction engineering drawings for completed work, and post-dredging survey drawings for any dredging work.

23. Maintenance. The permittee shall maintain the work or structures authorized herein in good condition, including maintenance to ensure public safety. Dredging projects: note that this does not include maintenance of dredging projects. Maintenance dredging is subject to the review thresholds on page 10, and/or any conditions included in a written Corps authorization.

24. 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.

25. 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; and any such action shall not be the basis for any claim for damages against the United States.

26. 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.

27. Special Conditions. The Corps may impose other special conditions on a project authorized pursuant to this general permit 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.

28. 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, the permit shall not be valid and the Government may institute appropriate legal proceedings.

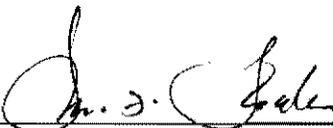
29. Abandonment. If the permittee decides to abandon the activity authorized under this general permit, unless such abandonment is merely the transfer of property to a third party, he/she must restore the area to the satisfaction of the Division Engineer.

30. Enforcement cases. This general permit does not apply to any existing or proposed activity in Corps jurisdiction associated with an on-going Corps of Engineers enforcement action, until such time as the enforcement action is resolved or the Corps determines that the activity may proceed independently without compromising the enforcement action.

DURATION OF AUTHORIZATION/GRANDFATHERING:

31. Duration of Authorization. Activities authorized under this general permit that have been commenced (i.e., are under construction) or are under contract to commence in reliance upon this authorization will remain authorized provided the activity is completed within twelve months of the date of the general permit's expiration, modification, or revocation, unless 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). Activities completed under the authorization of the general permit that was in effect at the time the activity was completed will continue to be authorized by the general permit.

32. Previously Authorized Activities. (a) Activities which have commenced, i.e. are under construction or are under contract to commence, prior to the issuance date of this general permit, in reliance upon the terms and conditions of the non-reporting category of the previous Massachusetts PGP, shall remain authorized provided the activity is completed within twelve months of the date of issuance of this general permit, unless discretionary authority has been exercised on a case-by-case basis to modify, suspend, or revoke the authorization in accordance with Condition 4. The applicant must be able to document to the Corps' satisfaction that the project was under construction or contract by the appropriate date. (b) Projects that have received written verification or approval from the Corps, based on applications made to the Corps prior to issuance of this general permit, for the previous Massachusetts PGP, 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 general permit.


DISTRICT ENGINEER

Dec 28, 1994
DATE

Contacts for Programmatic General Permit:

January 1, 1995

U.S. Army Corps of Engineers
Regulatory Division
424 Trapelo Road
Waltham, Massachusetts 02254-9149
617-647-8335
800-343-4789 (ME, VT, NH, RI, CT)
800-362-4367 (Massachusetts)

Coastal Zone Management
100 Cambridge Street 20th Floor
Boston, Massachusetts 02202
617-727-9530

Massachusetts Historical Commission
80 Boylston Street
Boston, Massachusetts 02116
617-727-9530

National Park Service
North Atlantic Region
15 State Street
Boston, Massachusetts 02109-3572

Federal Endangered Species:

U.S. Fish and Wildlife Service
22 Bridge Street Unit #1
Concord, New Hampshire 03301-4901
603-225-1411

National Marine Fisheries Service
One Blackburn Drive
Gloucester, Massachusetts 01930-2298
508-281-9300

Massachusetts Department of Environmental Protection (DEP):

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

Regional DEP Offices:

DEP-Western Region
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
75 Grove Street
Worcester, Massachusetts 01605
508-792-7650

DEP-Northeast Region
Wetlands Protection Program
10 Commerce Way
Woburn, Massachusetts 01801
617-932-7600

National Wild and Scenic Rivers System segments and study segments for Massachusetts as of June 2, 1992, include: **West Branch of the Farmington River** from Hayden Pond in Otis downstream to the confluence with Thorp Brook in Sandisfield; **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 1000 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 the **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 2000 feet downstream of Becket Village in Becket, MA, downstream to the Chester/Huntington, MA, town line. **Projects located in these segments, or within 0.25 mile up- or down-stream, or 0.25 mile upstream on any tributary, are excluded from the PGP.**

401 Water Quality Certification:

January 1, 1995

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 the Massachusetts DEP before work can proceed pursuant to this general permit for the following circumstances (pursuant to MGL c. 21 Sections 26 - 53 and regulations at 314 CMR 9.00, as supplemented by the Interim Guidance effective 10/1/92), until replaced by revised regulations in early 1995:

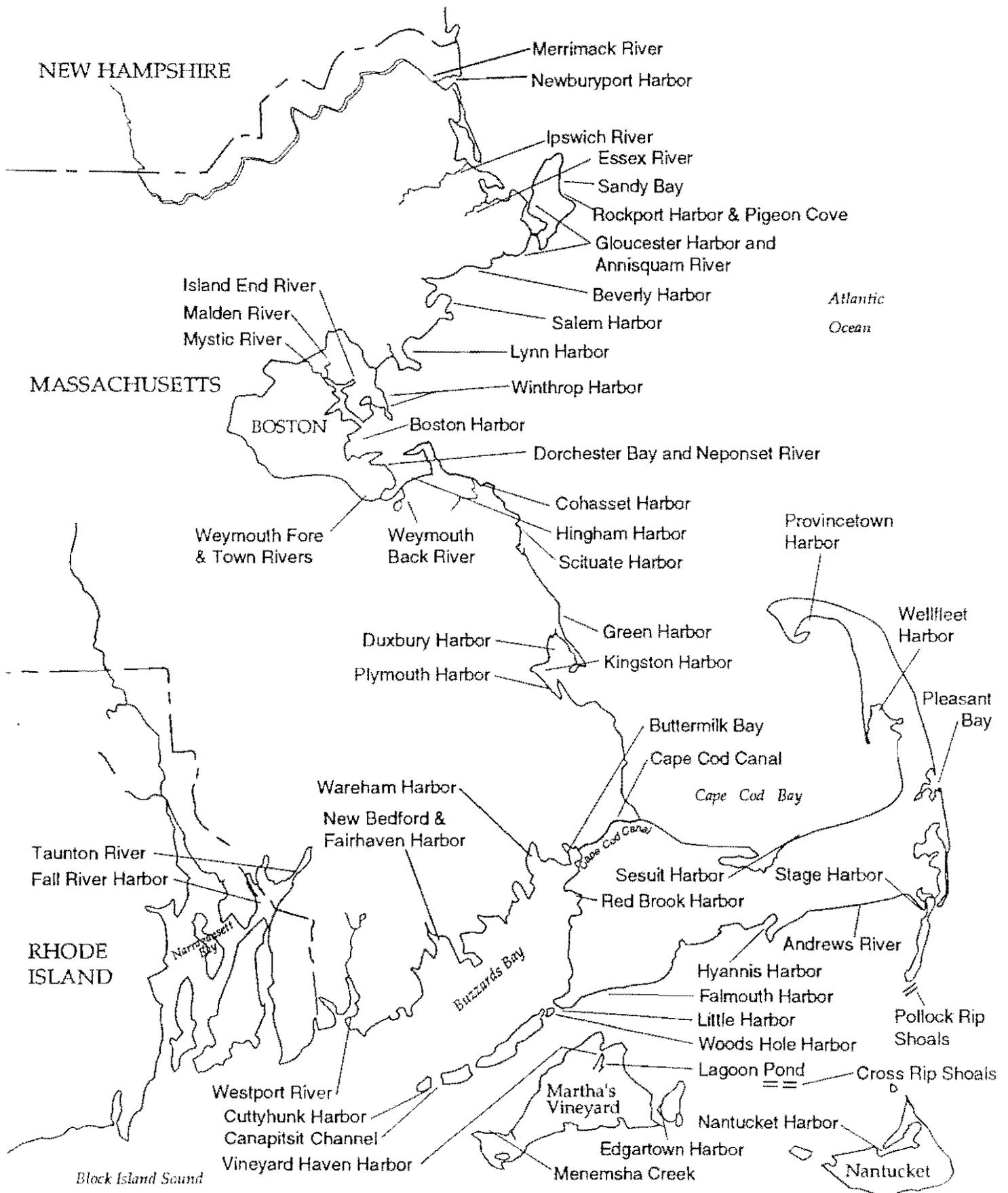
1. proposed work that is not subject to the WPA (310 CMR 10.00) but does require a 401 Water Quality Certification and proposes the loss of bordering vegetated wetlands, land under water, or federal non-state wetland (e.g., WPA exemptions);
2. any project intended to create a real estate subdivision for which a Notice of Intent is submitted on or after October 1, 1992;
3. any project which will result in the loss of more than 5,000 square feet of bordering vegetated wetlands or land under water;
4. proposed work in Outstanding Resource Waters (ORWs) as designated in 314 CMR 4.00;
5. proposed work in coastal areas which will result in the loss of any amount of salt marsh;
6. projects involving dredging more than 100 cubic yards in navigable waters.

DEFINITION OF CATEGORIES

	CATEGORY I	CATEGORY II	INDIVIDUAL PERMIT
A. INLAND WATERS AND WETLANDS (WATERS OF U.S. (1))			
(a) NEW FILL / EXCAVATION DISCHARGES:	Less than 5,000 s.f. 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. - This category excludes dams, dikes, water diversions, water withdrawals. - In-stream work limited to July 15 - Oct. 1	5,000 s.f. 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. - Any dam, dike, water diversion or water withdrawal project. - Time-of-year restriction to be determined case-by-case.	Greater than 1 acre inland waterway or wetland fill and secondary impacts (e.g., areas drained, flooded or cleared). Impact area includes all temporary and permanent fill and excavation discharges. EIS required by the Corps.
(b) BANK STABILIZATION PROJECTS:	Inland bank stabilization less than 500 ft. length and less than 1 c.y. fill per linear foot below ordinary high water, provided no wetland fill.	Inland bank stabilization greater than 500 ft. length and/or greater than 1 c.y. fill per linear foot, or any amount with fill in wetlands.	
(c) REPAIR AND MAINTENANCE OF AUTHORIZED FILLS:	Repair/maintenance of existing, currently-serviceable, authorized fills with no expansion or change in use.	Replacement of non-serviceable fill, or repair/maintenance of serviceable fill, with expansion of any amount up to 1 acre, or with change in use.	Replacement of non-serviceable fill, or repair/maintenance of serviceable fill, greater than 1 acre.
B. TIDAL WATERS AND NAVIGABLE WATERS (2)			
(a) FILL:	Fills authorized by Ch. 91 amnesty program (e.g., seawalls, bulkheads). No provisions for new fill in Cat. I.	Up to 1 acre waterway fill and/or secondary waterway and wetland impacts (e.g., areas drained or flooded). Fill includes temporary and permanent waterway fill. Temporary salt marsh fill or excavation discharges up to 1 acre. No provisions for permanent salt marsh fill in PGP.	Greater than 1 acre waterway fill and/or secondary waterway or wetland impacts (e.g., areas drained or flooded). Fill includes temporary and permanent waterway fill. Temporary salt marsh fill or excavation discharges greater than 1 acre. Permanent salt marsh fill, any amount. EIS required by the Corps.
(b) REPAIR AND MAINTENANCE WORK:	Repair/maintenance of existing, currently-serviceable, authorized fills, including amnesty-approved fills, with no expansion or change in use.	Replacement of any non-serviceable fill, or repair/maintenance of serviceable fill, with expansion of any amount up to 1 acre, or with change in use.	Replacement of non-serviceable fill, or repair/maintenance of serviceable fill, greater than 1 acre.

	CATEGORY I	CATEGORY II	INDIVIDUAL PERMIT
(c) DREDGING:	Maintenance dredging less than 1,000 c.y. with upland disposal; provided proper siltation controls are used; limited to dredging and disposal operations conducted between Nov. 1 and Jan. 15; with no impact to special aquatic sites (3).	Maintenance dredging greater than 1,000 c.y. or that does not meet the terms in Cat. I; upland disposal or beach nourishment required, and no impacts to special aquatic sites (3). See (a) above for limitations on fill for beach nourishment.	Maintenance dredging (any amount) in or affecting a special aquatic site (3), or with open water disposal.
		New dredging up to 10,000 c.y.; upland disposal or beach nourishment required. See (a) above for limitations on fill for beach nourishment.	New dredging greater than 10,000 c.y. or of any amount in or affecting a special aquatic site (3), or with open water disposal.
(d) MOORINGS:	Private, non-commercial, non-rental single boat moorings not associated with any boating facility (4); provided not located in Federal Navigation Project.	Moorings that do not meet the terms in Cat. I; and moorings that meet the terms of Cat. 1 that are located within a Federal anchorage.	Moorings within the horizontal limits, or with moored vessels that extend within the limits, of Corps Federal Navigation project, except those in Federal anchorages under Cat. II
(e) PILE-SUPPORTED STRUCTURES AND FLOATS:	Private, bottom-anchored floats up to 400 s.f. in size; and Private, pile-supported piers for navigational access to the waterway, up to 1,000 s.f. in size with attached floats up to 200 s.f. (total); Provided: - floats are supported off the substrate at low tide, - structures and moored vessels are not positioned over vegetated shallows (5) or salt marsh; - Ch. 91 license has been issued (for pile-supported structures only); - not associated with a boating facility (4); - not located within 3 times the depth of a Corps Federal Navigation Project. Piers and structures licensed by Ch. 91 through the amnesty program.	Private piers and floats that do not meet the terms in Cat. I. Expansions to existing boating facilities (4).	Any structure, pier or float that extends, or with docked or moored vessels that extend, within the horizontal limits of a Corps Federal Navigation Project. Structures, including piers and floats, associated with a new or previously unauthorized boating facility (4).

Federal Navigation Projects in Massachusetts



MASSACHUSETTS PROGRAMMATIC GENERAL PERMIT
Coordination Procedures for Category II

Federal Resource Agency Coordination: Projects to be screened will be reviewed with the Federal resource agencies (Environmental Protection Agency, U.S. Fish and Wildlife Service, and National Marine Fisheries Service) at meetings held every three weeks, or as necessary to provide applicants with a timely response. The Corps and Federal agencies may agree on certain activities that do not need to be coordinated at these meetings. For projects to be reviewed with the Federal agencies, the agencies may recommend special conditions for projects to avoid or minimize adverse environmental effects and to insure that the terms and conditions of the general permit are met. The Corps will determine that a project is ineligible under this general permit and will begin its individual permit review procedures if any one of the Federal agencies, within 10 working days after 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 10 working days from the date of the verbal comment. The intent of the verbal notification is to allow the Corps to give timely notification to the applicant that additional information, or an individual Corps' permit, may be required. The Corps may reinstate a project's eligibility under the PGP provided the Federal agencies' concerns have been satisfied.

Coastal Zone Management: Category II projects that involve work in or affecting the coastal zone will be coordinated with CZM at Joint Processing, or by fax if a CZM representative is not at the Joint Processing meeting. CZM will make a determination, at Joint Processing or within ten working days, 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 consistency concurrence will be required for the project. If CZM requires an individual CZM consistency concurrence, the Corps may issue a procedural denial letter, which will notify the applicant that the Federal authorization is not valid until CZM consistency concurrence is issued or waived by the the Office of Coastal Zone Management.

Minerals Management Service (MMS): Projects with construction of solid fill structures or discharge of fill that may extend 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 U.S.C. Section 1301-1315, 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 15 day review period will constitute a "no affect" determination. Otherwise, the solicitor's notification to the Corps may be verbal but must be followed with a written confirmation within 10 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 General Permit.

ENVIRONMENTAL ASSESSMENT AND STATEMENT OF FINDINGS

1. Applicant: Regulated Public, Commonwealth of Massachusetts
Application Number: 1993-01040

2. This permit action is being taken under authority delegated to the District Engineer from the Secretary of the Army and the Chief of Engineers by Title 33, Code of Federal Regulations, Part 325.8, pursuant to:

- Section 10 of the Rivers and Harbors Act of 1899
- Section 404 of the Clean Water Act
- Section 103 of the Marine Protection, Research, and Sanctuaries Act

3. Character, location, and purpose of work: The New England Division of the U.S. Army Corps of Engineers proposes to reissue the Massachusetts Programmatic General Permit (PGP), with several revisions, for minimal-impact activities in Massachusetts. The current PGP has been in use for over a year, since August 24, 1993. The decision to reissue the PGP is based on an evaluation of this trial period, and an evaluation of the responses to the public notice describing the proposed revisions. No changes in the overall procedures or scope of the PGP are proposed. Minor changes in review categories, and minor text changes are proposed. The purpose of reissuance of the PGP is to provide an efficient, comprehensive permitting mechanism for the regulatory program in Massachusetts, that simplifies permitting requirements for applicants and avoids duplication of Federal and state review.

A summary of the statistics regarding use of the PGP during the trial period is included in section 9.f. below.

Activities to be covered by the PGP include minimal-impact structures or work in or affecting navigable waters of the United States, and the discharge of dredged or fill material into waters of the United States.

4. Environmental setting: The general permit would be applicable throughout the Commonwealth of Massachusetts and effects coastal and inland waterways and wetlands. The state has varied environmental settings that include varied types of waterways and wetlands.

5. Character of Resources Impacted: Activities covered under this general permit could affect all waters of the United States in Massachusetts, including the territorial seas and coastal waters and wetlands, and rivers, streams, lakes, ponds, and inland wetlands. These aquatic resources have varied functions and values, depending on the nature of the resource and the degree of development in the area. Because the general permit is to be used for activities with minimal individual and cumulative impacts on

the aquatic environment, it is unlikely that the character of the aquatic resources in Massachusetts will be substantially changed by this permit.

6. Relationship to existing uses: Work authorized under this general permit would have minimal individual and cumulative impacts on the aquatic environment. As such, it is not expected to conflict substantially with existing uses of aquatic resources.

The proposed changes to the PGP are relatively minor. Several minimal-impact activities have been added to Category I (non-reporting) work; several stipulations have been added to limit various activities in both Category I and Category II; and one item has been switched from Category III (individual permit required) to Category II. These changes are based on an evaluation of use of the PGP during the trial period, and are not expected to substantially change protection of resources or regulatory efficiency under the PGP.

7. Alternatives: Alternatives include eliminating the PGP altogether, and returning to use of the Nationwide permits; expanding or reducing the scope of the PGP, such as changing the review thresholds; and the "no action" alternative (continue use of the current PGP).

a. No action: Several changes have been deemed necessary to increase the clarity, efficiency or protection of the PGP. These changes are discussed in detail below. Therefore, the no action alternative is not deemed suitable.

b. Nationwide permits: Response from the general public and the federal and state agencies has been favorable for continued use of the PGP. The PGP provides a simpler regulatory framework for the regulated public, increases the coordination between federal and state agencies, and provides a more efficient review process. Comparison of a one-year period with the Nationwide program prior to the PGP, and a full year of use of the PGP, indicates that the Corps reviewed more projects under the PGP, but processed applications more quickly than under the Nationwide permits. This means the Corps and Federal agencies may review more work, but process applications more efficiently with the PGP. This will insure environmental protection and reasonable review times for applicants with the PGP. Therefore, the alternative of returning to the Nationwide permits is not preferred.

c. The following changes were identified by the Corps in the Public Notice as potential areas for revisions to the review thresholds of the PGP (final changes are indicated in parentheses, and are discussed in more detail in Section 8 below):

(a) bank stabilization in tidal waters (new work changed from Cat. III to Cat. II; repairs changed from Cat. II to Cat. I);

- (b) dredging with open-water disposal (no changes made);
- (c) beach nourishment (no changes made);
- (d) time-of-year restriction for in-stream work (no change);
- (e) Massachusetts Wetland Protection Act (WPA) limited projects for oil spills and for dam repair (no change);
- (f) enforcement provision (added provision that PGP cannot apply to enforcement sites without Corps approval);

Other recommendations for changes in review thresholds were made by the Corps, federal agencies or the public for the following activities:

- (g) structures in/near federal projects (non-commercial moorings in federal anchorages moved from Cat. III to Cat. II; structures located within 3 times the depth of a federal project moved from Cat. I to Cat. II);
- (h) scientific measurement/survey activities (added as a Cat. I activity).
- (i) structures in the intertidal zone and in vegetated shallows (no change);
- (j) vernal pools and spawning areas (spawning areas clarified as fish and shellfish spawning areas, no change for vernal pools);
- (k) work in National Wild and Scenic Rivers and within 0.25 mile (activities in these areas changed to Cat. III);
- (l) inland bank stabilization (no change);
- (m) airport tree clearing limited projects (no change);
- (n) endangered species (PGP kick-out changed from "jeopardy" determination to "may affect" determination).

A detailed description of the proposed revisions and our evaluation is provided below in Section 8.

8. The following checklist summarizes the anticipated impacts of the proposed PGP. On weighing the various factors, the net environmental effects are considered to be minor.

EFFECTS ON PUBLIC INTEREST FACTORS:

+ Beneficial - Adverse 0 Negligible Effect

0 Water Quality 0 Benthic Flora & Fauna
 0 Land Use Classification

+ Wetlands	0 Water Supply and Conservation	
0 Flooding	0 Historical	0 Energy Needs
0 Economics	0 Drainage	0 Air Quality
0 Aesthetics	0 Circulation Patterns	0 Noise
0 Wildlife	0 Erosion/Accretion	0 Mineral Needs
0 Finfish/Plankton		0 Navigation
0 Food and Fiber Production		0 Recreation
0 Floodplain Values		0 Other
0 Property Ownership		
+ Needs and Welfare of the People		

EVALUATION OF AFFECTED PUBLIC INTEREST FACTORS:

Wetlands: There will be no change to the review thresholds for wetland impacts from the current PGP. The screening process for Category II projects, and spot-checks of the Category I files at the regional DEP offices, indicate that minimal-impact work is normally occurring under the PGP. Therefore, long-term impacts to wetlands in the Commonwealth should be minimal from use of the PGP.

General Environmental Concerns: Several changes have been made to the review thresholds and conditions of the PGP, to ensure adequate environmental protection. Descriptions of Category I and II activities were revised and/or clarified in some cases to provide increased protection to various resources. Several conditions were modified, and a new condition was added, to ensure adequate environmental safeguards. These changes are discussed in more detail in Section 9 below.

Needs and Welfare of the People: We have received favorable responses concerning the use and efficiency of the PGP. Therefore, we appear to be attaining the goals of simplifying the regulatory process for the public. The trial period of the PGP indicated that less projects were reviewed for individual permits than prior to the PGP. In addition, the average processing time compared to the Nationwide permits (computed from the date we have a complete application) has substantially decreased. Therefore, the PGP should have positive long-term benefits for the public.

9. Findings:

a. State and local licenses: These will be issued on a case-by-case basis where required. This general permit requires that all other federal, state, and local licenses be obtained for authorization under this general permit to be valid.

b. Water quality certification and coastal zone management consistency concurrence were presumed waived December 8, 1994, following an extension of the review clocks to that date by the Corps.

c. A public notice adequately describing the proposed changes to the PGP was issued on May 3, 1994, and sent to all known interested parties. A total of 5 letters were received in response to the public notice. Most commenters objected to inclusion of open-water disposal projects in the PGP, including the Conservation Law Foundation, the Coastal Advocacy Network, and Save the Harbor Save the Bay. The reasons they object to inclusion of open-water disposal under the PGP include: (a) open-water disposal of large quantities of material, which may have elevated levels of contaminants, may not have minimal impacts and should be reviewed with adequate public notice and opportunity for comment; (b) concerns with impacts on Stellwagen Bank, a national marine sanctuary, from disposal at the Massachusetts Bay Disposal Site; (c) concerns with how material will be determined "clean" and "suitable" for open-water disposal; impacts from disposal include potential adverse effects on the marine ecosystem, Stellwagen Bank, and public health.

Based on the controversial nature of this issue, the concerns expressed above, and the concerns of the Federal resource agencies, we have left open-water disposal projects in Category III, individual permit required.

The Cape Cod Bay Disposal Site has recently been designated by the Commonwealth as a disposal site, based on completion of a management plan for the site, and completion of several tasks in the plan that were required prior to any disposal at the site (e.g., pre-disposal condition surveys and deployment of a marker buoy). The management plan does not provide a response to the concerns with open-water disposal listed above, and makes no changes to the existing regulatory framework for open-water disposal, other than requiring a marine mammal observer on board each disposal trip.

However, the monitoring requirements of the plan may provide sufficient information over a long-term period of use of the site to determine if disposal projects at CCBDS can be considered minimal impact projects. Monitoring will evaluate changes in substrate type and contours, water quality, and assimilation of pollutants by benthic organisms. We recommend that inclusion of CCBDS disposal projects in the PGP be reevaluated when the PGP is due for reissuance in 5 years.

Two of the comment letters received in response to the public notice were submitted by the Massachusetts Aeronautics Commission, requesting that airport tree clearing limited projects, under the Massachusetts Wetlands Protection Act (WPA), be placed in Category I or II of the PGP. The limited project has no upper acreage threshold and could be applied to projects with impacts to substantial wetland acreages. The Generic Environmental Impact Review (GEIR) prepared to justify limited project status under the WPA was submitted for our review. Based on a review of the GEIR

and the requirements of the limited project, we have determined that we have insufficient information to assure that these projects will normally have only minimal impacts.

In particular, we do not agree with decreasing the level of federal review when detailed assessments of wetland functions and values, and determinations of whether mitigation is required, may be required for substantial wetland impact areas.

Other changes described in Public Notice include:

(a) bank stabilization in tidal and navigable waters (see e.6 below);

(b) beach nourishment (e.11 below);

(c) time-of-year restriction for in-stream work: no change made, based on objections to relaxing the requirement that Category I work be conducted during the low flow period;

(d) Massachusetts WPA limited projects for oil/hazardous material clean-up and dam safety projects: no provisions made for these projects; adequate provisions exist in our regulations for emergency situations, and special review thresholds for non-emergency work have not been justified (may not be minimal-impact work; if non-emergency work, does not warrant special consideration). We cannot make exceptions to the impact thresholds for any specific type of work without adequate documentation that the work has minimal impacts and that special review requirements are justified.

(e) Enforcement Condition: added Condition 30, which prohibits use of the PGP to authorize work associated with an on-going enforcement investigation by the Corps.

d. The revised PGP was coordinated with the Federal resource agencies through issuance of the public notice in May, and as a revised draft document provided September 28, 1994. Their comments and concerns have been addressed (detailed discussion provided below) and the agencies have no outstanding objections to issuance of the revised PGP.

e. Evaluation of revisions/comments:

1) EPA requested that we make a special provision in the PGP so that projects with less than 5,000 s.f. impacts to vernal pools would be screened (Category II). They believe the impacts to wildlife populations in New England warrant special protection for vernal pools. They also believe the protection provided by the state program, through certification of vernal pools as Outstanding Resource Waters (ORWs), is inadequate because the certification process is slow and because there are exceptions to

the ORW regulations that would permit fill in vernal pools.

The Corps has determined that vernal pools should not be specifically called out in the PGP as a special case for increased review, when project impacts in Corps jurisdiction are less than 5,000 s.f. The existing state program provides adequate protection for certified vernal pools (individual WQC required). If concerns for impacts to non-certified vernal pools are brought to our attention, there are adequate provisions in the PGP to require screening or an individual permit, through discretionary authority, if we have concerns with the impacts from the proposal.

We have also strengthened the language of Condition 21 to indicate that wildlife values should be maintained as much as is practicable. We will continue to review all projects with greater than 5,000 s.f. impacts to insure that impacts to wildlife values are avoided and minimized as much as is practicable.

2) U.S. Fish and Wildlife Service requested that all inland bank stabilization projects be screened under Category II. The basis for this recommendation is that a federally listed endangered species, the Dwarf Wedge Mussel, inhabits the banks of rivers and streams and is very susceptible to bank alterations. The Plymouth red-bellied turtle is a federally listed species that inhabits the banks of inland ponds in southeastern Massachusetts. The Northeastern bulrush is a federally listed endangered plant species that may occur along the banks of inland lakes and ponds and could be adversely affected by bank stabilization projects.

We believe there is insufficient information to warrant an increased level of review for these types of projects. The Category I provisions for inland bank stabilization prohibit fill in wetlands, which should protect against filling in areas where the Northeastern bulrush occurs. The Corps has reviewed very few inland bank stabilization projects since the PGP was issued. However, based on informal estimates from the MA DEP regional offices, a substantial number of bank stabilization applications are reviewed by the DEP in some areas of Massachusetts (presumably in Cat. I, non-reporting to the Corps). We do not want to increase the regulatory burden for these types of projects without a well-substantiated need to do so.

There are provisions in the PGP to protect endangered species; under Category I the burden of proof is placed on the applicant to be sure federally listed endangered species do not occur in the vicinity of the project. Because the Dwarf Wedge Mussel is difficult to find (small organism, living in sandy substrates, which may or may not occur in groups), and has only been documented in several areas, we do not want to increase the regulatory burden for all inland bank stabilization projects unless it is shown that doing so across the state will serve an overriding benefit.

3) The U.S. Fish and Wildlife Service also recommended that we modify Condition 19 on spawning areas, to offer protection for a broad range of wildlife functions. Their recommended wording for such a condition would require that existing wildlife functions be maintained and protected, including spawning, nursery, hibernacula, nesting, migration, and other critical life cycle functions of fish, aquatic life and other wildlife.

We believe that this language is too restrictive and would essentially prohibit any discharge in any water of the U.S. because any of these wildlife functions are likely to occur in any wetland or waterway in the state. We regard the 5,000 s.f. threshold for non-reporting discharges in inland waterways and wetlands as adequate assurance that only minimal-impact work will occur without our review. We will continue to protect these values as much as possible through the Category II screening process. In addition, the strengthened language regarding wildlife values in Condition 21 (see 1 above) should strengthen the message to the regulated public that these functions are important.

4) National Marine Fisheries Service recommended that Category I exclude moorings in the intertidal zone and in vegetated shallows. They believe that the impacts from moorings in eelgrass vegetation, and from vessels grounding at low tide in the intertidal zone, are substantial.

These restrictions would substantially change the status of private, non-commercial moorings as authorized previously under the Nationwide permits, and would substantially increase the number of cases where application to the Corps was required. Currently non-reporting moorings located in a broad range of waterways in Massachusetts would require application to the Corps. These environments (eelgrass vegetation and the intertidal zone) are naturally dynamic systems, which experience a variety of changes on a regular basis (e.g., fluctuations in limits and densities of eelgrass vegetation). Because we do not have evidence to indicate that the impacts from the existing moorings in eelgrass vegetation are more than minimal, and that the impacts of vessels grounding in the intertidal zone are more than minimal, we have not included these restrictions in Cat. I of the PGP.

We will continue to review these impacts for projects that are screened (e.g., rental mooring fields). We also have the opportunity to comment on these issues when we review Harbor Management Plans, and when we coordinate with harbor masters on other issues.

5) National Marine Fisheries Service recommended that Category I structures (pile-supported piers and floats) exclude structures within 50' of vegetated shallows, to prevent adverse impacts from boat traffic around the structure. They also object to the PGP

language that requires that floats be supported off the substrate at low tide, and recommend that we require a minimum of 2' water at mean low water instead.

We have broadened the Cat. I exception for vegetated shallows to state that structures *and vessels moored at them* cannot be directly over eelgrass vegetation because of adverse impacts from shading. We believe the 50' distance would be difficult for applicants and the Corps to determine without expensive surveys. One can generally determine if eelgrass is in the project vicinity by walking out into the waterway where the structure will be; determining if it occurs within 50' would require investigations over a greater area in substantially deeper waters. Additionally, the natural variability in limits and density of eelgrass vegetation in a particular area make a specific set-back requirement impractical. We do not have evidence to indicate that the secondary impacts to eelgrass around structures are more than minimal, and warrant such increased review.

Specifying a minimum depth for floats will remove some of the flexibility applicants have with the current PGP, and will impose a stricter standard that may require more expensive surveys. We do not have evidence that the impacts from floats in less than 2' at MLW are generally more than minimal and require either stricter standards or review.

6) National Marine Fisheries Service recommended changing the "kick-out" for endangered species from a "jeopardy" determination to a "may affect" determination. The basis for the change is that a determination that a project may affect an endangered species is likely to constitute more than minimal impact. In addition, a "may affect" determination requires formal consultation under the ESA. Therefore it should not be a regulatory burden to process these applications for an individual permit while coordination under the ESA is conducted.

7) EPA objected to the change in review status of tidal and navigable waters bank stabilization projects, from Category III to Category II. The basis of the objection was that shifting projects into the screening category increases the work required by the federal agencies (may require agency site visit, requires comments/conditions within a specified time-frame with inadequate project information). We have changed the status of these projects with the agreement of the Office of Coastal Zone Management, which had required individual permit review for the trial period of the PGP. They have agreed that these types of projects can be screened, similar to other tidal or navigable waters fill projects, and they will have the opportunity to comment at JP, and to require an individual CZM consistency review. We believe the screening process, with CZM staff attending JP, will be the most efficient way to process these applications. We prefer to work toward bringing complete

information to JP for the federal agencies to review, rather than having stricter Category III requirements to accomplish the same end result.

8) The National Park Service objected to the status of projects located in the National Wild and Scenic River system. They requested that projects within National Wild and Scenic Rivers, or study segments, require an individual permit to provide the opportunity for public comment. This change has been made. The National Park Service also requested a screening mechanism for Category I projects proposed in close proximity to designated rivers or study segments. In order to keep the PGP simple, we have not included a separate procedure for these projects, but will require an individual permit for projects within 0.25 mile of a designated river or study segment (i.e., treat projects near the system the same as projects located *within* the system).

9) Condition 26 (Special Conditions; Condition 27 in revised PGP) has been broadened to specify that special conditions may be imposed based on any factor of the public interest. The previous wording referenced special conditions to avoid adverse environmental effects.

10) The Navigation Division at New England Division recommended specifying that moorings that meet the terms and conditions of Category I be allowed in Federal anchorages. This change was made.

11) The Navigation Division at New England Division recommended that any structure or pier that extends closer to the horizontal limits of any Corps Federal navigation project than a distance of three times the project's authorized depth be screened in Category II. This change was made to the provisions in Category I for new piers and floats.

12) Beach Nourishment: one acre below the high tide line would allow disposal of only approximately 1,600 c.y. of material, with a depth of 1' (typical beach nourishment depth). The justifications for a different threshold are that beach nourishment is usually a beneficial use of dredged material, and that it is economically beneficial because it is cheaper than other disposal options. (Note: 10,000 c.y. of material, at a depth of 1', would cover approximately 6 acres.) Because of concerns with disposal in resource areas, no changes were made to the status of beach nourishment as a tidal/navigable waters fill activity.

13) Scientific measurement devices and survey activities were included in the non-reporting category for tidal and navigable waters, to cover minimal-impact work formerly covered by Nationwide permits 5 and 6.

f. General Evaluation:

Procedures: Implementation of the PGP in place of the Nationwide permits and other permitting mechanisms for minor work in Massachusetts has increased coordination and consistency between the Federal and state regulatory programs, and has increased the efficiency of our review. General responses from the federal and state agencies, and the public, have been favorable.

A comparison of 1 year of use of the PGP showed that fewer individual permits (IPs) were processed (20 IPs) than during the previous year without the PGP (44 IPs). Average processing time (from date of complete application) for minimal-impact projects had decreased from approximately 60 days (estimate for Nationwide permits, letters of permission, etc.) to 15 days for the PGP. Out of 521 actions taken, 389 were Category I activities and 171 were Category II. For Category II work, the federal agencies required individual permit review in only a small percentage of cases. About half the projects screened by the federal agencies required additional information and/or a site visit, although that amount is decreasing as the PGP gets more use (currently about one quarter of the projects need additional information or a site visit). Of those projects, all but a few are authorized by the PGP once additional information is obtained or a site visit completed.

This confirms that our goals of increasing efficiency and maintaining adequate environmental protection are being met. It appears that we are reviewing more work than prior to the PGP, and reaching a final decision in less time. We will continue with measures to increase the efficiency of coordination with the federal agencies, and to inform the public of what is required for a complete application.

Impacts - Category I: Spot-checking was conducted at the MA DEP regional offices, and the MA DEP Division of Waterways, to determine the types of work being reviewed at the local and state level that meets Category I of the PGP. Most files checked were cases where the Corps did not review an application. The files were checked to determine if activities were what we expected for minimal-impact work. The following time periods were covered:

Northeast Region: 40% of files over a 3-month period checked.
Western Region: 40% of files over a 7-month period checked.
Central Region: 90% of files over a 7-month period checked.
Southeast Region: 90% of files over an 8-month period checked.
Chapter 91: approx. 15% of amnesty files over 9-month period.

Our findings indicate that the majority of Category I work consists of minimal-impact work that is consistent with what we anticipated. The only problems we had in determining if the projects were what we expected for Category I were the following:

(a) insufficient information in many cases to determine impacts with respect to federal jurisdictional boundaries; (b) insufficient information in some cases to determine if the impacts being reviewed were part of a single/complete project, or in several instances, file information suggested work was one component of a larger project.

Subdivisions and activities in Outstanding Resource Waters (ORWs) require an individual water quality certification from the DEP. We found a very thorough, comprehensive review of these applications by the DEP. This confirms our premise that the Corps does not need to review these projects when impacts are less than 5,000 s.f., because they receive adequate review by the state. Applications for exemptions were rare, but we presume they receive the same level of review by the DEP as subdivisions and ORWs.

Because of the findings from spot-checking, we have added emphasis to the text of the PGP concerning the requirement that the PGP apply to single and complete projects, and that federal jurisdictional boundaries must be used. We plan on continuing this spot-checking throughout the use of the PGP. It provides useful information on the types of work occurring throughout the state. It would be worthwhile to expand this effort to include keeping track of the number of approvals, and cumulative wetland and/or waterway impacts by region.

Out of approximately 665 projects reviewed under the PGP from August 24, 1993, to November 30, 1994, 471 were Category I activities. At least 140 of these were amnesty projects. At least 45 were minor access road fills. Other common Category I activities included utility projects, piers and floats, bridge repair and other repair work.

Despite the designation as non-reporting work, we are still receiving substantial numbers of requests for written determinations under Category I. We have tried to keep this in mind in making revisions to the PGP, by keeping the terms and conditions of Category I as simple as possible. We should continue to work with the state and local agencies to develop mechanisms to streamline evaluation of Category I work. It may be that Corps review of Category I work at each DEP regional office could be used to eliminate separate applications to the Corps.

Impacts - Category II: Out of 665 projects reviewed between August 24, 1993, and November 30, 1994, 194 were Category II projects. These include a broad range of activities, covering virtually all aspects of Category II designations. The level of review in conjunction with federal agency screening appears to be adequate to insure that only minimal-impact work is authorized. In many cases, either the Corps or the federal agencies conduct a site visit. Other sources of information could be evaluated, to increase the efficiency of review, including insuring applicants

submit adequate site information, and increasing coordination with state agencies and conservation commissions who may have knowledge of a particular site or area.

A report has been designed to keep track of the PGP on our computer data base. This report assisted in the evaluation provided above. The report should be kept current, and should be modified as needed to provide the most effective means of tracking the number and types of activities authorized under the PGP. Evaluation could also be expanded to include an assessment of cumulative wetland and/or waterway impacts by region within the state. On-going evaluation is recommended to assist in reissuance after 5 years.

Revisions: The changes described above generally provide or enhance safeguards to insure adequate environmental protection. Several changes are to decrease the regulatory burden for some activities, where we have determined that an individual permit may not be warranted (e.g., moorings in federal anchorages and bank stabilization projects in tidal/navigable waters). Other recommended changes that would either increase protection, or decrease our review, were not adopted because there was inadequate justification for the change. Several text changes should make the PGP simpler to read and understand; we will continue to review this issue and try to implement measures to make the program readily understood.

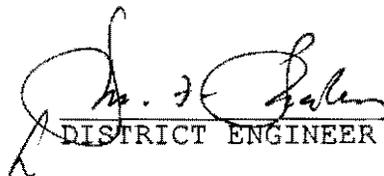
g. Application of the 404(b)(1) guidelines: The final guidelines of the Environmental Protection Agency for the discharge of fill or dredged material (40 CFR 230) as published in the Federal Register, dated 24 December 1980, have been applied in evaluating this general permit. The discharges of dredged or fill material authorized by this general permit have been found to comply with the guidelines, with the inclusion of appropriate conditions to minimize pollution or adverse effects on the affected aquatic environment.

h. The EPA regulations published as "General Conformity Rule" (58 FR 63214, November 30, 1993) to implement Section 176(c) of the Clean Air Act for non-attainment areas and maintenance areas require that Federal actions, unless exempt, conform with the Federally approved state implementation plan. The impacts on air quality associated with the regulated activity described in this EA/SOF (discharge of dredged or fill material into waters of the U.S. (Section 404 of the Clean Water Act); and/or work in or affecting navigable waters of the U.S. (Section 10 of the Rivers and Harbors Act); and/or the transportation of dredged material for disposal in ocean waters (Section 103 of the Ocean Dumping Act) have been considered and are expected to cause only de minimis increase in emissions. Therefore, the regulated activity is exempt from the requirements of the General Conformity Rule.

The rationale for the Corps of Engineers limiting its scope of analysis to emissions associated with the regulated activity is based on the fact that it is not practicable for the Corps to control indirect emissions and the Corps has no continuing program responsibility over the entire activity.

10. I find that based on an evaluation of the environmental effects discussed in this document, the decision on this proposal is not a major federal action significantly affecting the quality of the human environment. Hence, an environmental impact statement is not required.

11. I have considered all factors relevant to this proposal including cumulative effects. Potential factors included conservation, economics, aesthetics, general environmental concerns, wetlands, historic properties, fish and wildlife values, flood hazards, floodplain values, land use, navigation, shore erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, consideration of property ownership and, in general, the needs and welfare of the people. After weighing favorable and unfavorable effects as discussed in this document, I find that this Department of the Army programmatic general permit is not contrary to the public interest and should be issued.


DISTRICT ENGINEER

12/28/94
DATE

SHORT FORM
 Section 404(b)(1) Guidelines Compliance Determination
 (Ref.: 40 CFR Part 230, Federal Register, 24 December 1980)

APPLICANT: MA General Public APPLICATION NUMBER: 1993-01040 MA PGP

1. Review of Compliance (230.10(a)-(d)). Findings and Comments

A review of the permit application indicates that:

a. The discharge represents the least environmentally damaging practicable alternative and if in a special aquatic site, the activity associated with the discharge must have direct access or proximity to, or be located in the aquatic ecosystem to fulfill its basic purpose unless there are no practicable alternatives to the proposed activity (if no, see Sec. 2 and information gathered for EA alternative);

YES NO*

Summary of reasons for YES response:

Evaluation based on the types of discharges that will be allowed under the PGP.

b. The activity does not appear to: 1) violate applicable state water quality standards or effluent standards prohibited under Section 307 of the CWA; 2) jeopardize the existence of Federally listed endangered or threatened species or their habitat; and 3) violate requirements of any Federally designated marine sanctuary (if no, see Sec. 2b and check response from resource and water quality certifying agencies);

YES NO*

c. The activity will not cause or contribute to significant degradation of waters of the U.S. including adverse effects on human health, life stages of organisms dependent on the aquatic ecosystem, ecosystem diversity, productivity and stability, and recreational, aesthetic and economic values (if no, see Sec. 2);

YES NO*

d. Appropriate and practicable steps have been taken to minimize potential adverse impacts of the discharge on the aquatic ecosystem (if no, see Sec. 5);

YES NO*

2. Technical Evaluation Factors (Subparts C-F). (N/A = Not Applicable, NS = Not Significant, S = Significant.)

a. Physical and Chemical Characteristics of the Aquatic Ecosystem (Subpart C).

N/A NS S

- 1) Substrate impacts.
- 2) Suspended particulates/turbidity impacts.
- 3) Water column impacts.
- 4) Alteration of current patterns and water circulation.
- 5) Alteration of normal water fluctuations/hydroperiod.
- 6) Alteration of salinity gradients.

	<input checked="" type="checkbox"/>		

Evaluation based on the types of projects that will be authorized by the PGP.

* See page 4.

b. Biological Characteristics of the Aquatic Ecosystem (Subpart D).

N/A MS S

- | | N/A | MS | S |
|--|-----|----|---|
| 1) Effect on threatened/endangered species and their habitat. | | ✓ | |
| 2) Effect on the aquatic food web. | | ✓ | |
| 3) Effect on other wildlife (mammals, birds, reptiles and amphibians). | | ✓ | |

c. Potential Impacts on Special Aquatic Sites (Subpart E)

- | | | | |
|-------------------------------|--|---|--|
| 1) Sanctuaries and refuges. | | ✓ | |
| 2) Wetlands. | | ✓ | |
| 3) Mud flats. | | ✓ | |
| 4) Vegetated shallows. | | ✓ | |
| 5) Coral reefs. | | ✓ | |
| 6) Riffle and pool complexes. | | ✓ | |

d. Human Use Characteristics (Subpart F).

- | | | | |
|--|--|---|--|
| 1) Effects on municipal and private water supplies. | | ✓ | |
| 2) Recreational and commercial fisheries impacts. | | ✓ | |
| 3) Effects on water-related recreation. | | ✓ | |
| 4) Aesthetic impacts. | | ✓ | |
| 5) Effects on parks, national and historical monuments, national seashores, wilderness areas, research sites, and similar preserves. | | ✓ | |

3. Evaluation of Dredged or Fill Material (Subpart G).

a. The following information has been considered in evaluating the biological availability of possible contaminants in dredged or fill material. (Check only those appropriate.)

- | | |
|---|-------------------------------------|
| 1) Physical characteristics..... | <input type="checkbox"/> |
| 2) Hydrography in relation to known or anticipated sources of contaminants..... | <input type="checkbox"/> |
| 3) Results from previous testing of the material or similar material in the vicinity of the project..... | <input type="checkbox"/> |
| 4) Known, significant sources of persistent pesticides from land runoff or percolation..... | <input type="checkbox"/> |
| 5) Spill records for petroleum products or designated (Section 311 of CWA) hazardous substances..... | <input type="checkbox"/> |
| 6) Other public records of significant introduction of contaminants from industries, municipalities, or other sources..... | <input type="checkbox"/> |
| 7) Known existence of substantial material deposits of substances which could be released in harmful quantities to the aquatic environment by man-induced discharge activities..... | <input type="checkbox"/> |
| 8) Other sources (specify)..... | <input checked="" type="checkbox"/> |

Requested as needed.

List of appropriate references and comments.

* See page 4.

b. An evaluation of the appropriate information in 3a above indicates that there is reason to believe (1) the proposed dredged or fill material is not a carrier of contaminants, or (2) that levels of contaminants are substantively similar at extraction and disposal sites, or (3) acceptable constraints will be implemented to prevent contaminants from being transported beyond the disposal site. The material meets the testing exclusion criteria. YES NO*

4. Disposal Site Delineation (230.11(f)). *N/A - Open water disposal not covered by PGP.*

a. The following factors as appropriate, have been considered in evaluating the disposal site.

- 1) Depth of water at disposal site.....
- 2) Current velocity, direction and variability at disposal site.....
- 3) Degree of turbulence.....
- 4) Water column stratification.....
- 5) Discharge vessel speed and direction.....
- 6) Rate of discharge.....
- 7) Dredged material characteristics (constituents, amount and type of material, settling velocities).....
- 8) Number of discharges per unit of time.....
- 9) Other factors affecting rates and patterns of mixing (specify).....

List of appropriate references and comments.

b. An evaluation of the appropriate factors in 4a above indicates that the disposal site and/or size of the mixing zone are acceptable. YES NO*

5. Actions to Minimize Adverse Effects (Subpart H).

All appropriate and practicable steps have been taken, through application of recommendations of 230.70-230.77 to ensure minimal adverse effects of the proposed discharge. YES NO*

List actions taken and comments.

Non-reporting activities are subject to the conditions of the PCA, to minimize adverse effects.

Projects to be screened by the Corps and Federal agencies may be modified and/or conditioned on a case-by-case basis to minimize adverse effects. All the standard conditions of the PGP also apply.

* See page 4.

6. Factual Determination (230.11).

A review of appropriate information as identified in items 2-5 above indicates that there is minimal potential for short or long-term environmental effects of the proposed discharge as related to:

- | | | |
|--|---|------------------------------|
| a) Physical substrate at the disposal site (review sections 2a, 3, 4 and 5)..... | <input checked="" type="checkbox"/> YES | <input type="checkbox"/> NO* |
| b) Water circulation, fluctuation and salinity (review sections 2a, 3, 4 and 5)..... | <input checked="" type="checkbox"/> YES | <input type="checkbox"/> NO* |
| c) Suspended particulates/turbidity (review sections 2a, 3, 4, and 5)..... | <input checked="" type="checkbox"/> YES | <input type="checkbox"/> NO* |
| d) Contaminant availability (review sections 2a, 3 and 4)..... | <input checked="" type="checkbox"/> YES | <input type="checkbox"/> NO* |
| e) Aquatic ecosystem structure and function (Review sections 2b and c, 3 and 5)..... | <input checked="" type="checkbox"/> YES | <input type="checkbox"/> NO* |
| f) Disposal site (review sections 2, 4, and 5)..... | <input checked="" type="checkbox"/> YES | <input type="checkbox"/> NO* |
| g) Cumulative impact on the aquatic ecosystem..... | <input checked="" type="checkbox"/> YES | <input type="checkbox"/> NO* |
| h) Secondary impacts on the aquatic ecosystem..... | <input checked="" type="checkbox"/> YES | <input type="checkbox"/> NO* |

7. Compliance Determination.

- a. The proposed disposal site for the discharge of dredged or fill material complies with the Section 404(b)(1) guidelines.....
- b. The proposed disposal site for the discharge of dredged or fill material complies with the Section 404(b)(1) guidelines with the inclusion of the following special conditions.....
(include conditions as they will appear on permit)

Evaluation based on the types of projects that will be allowed under the PGP. Authorization is subject to the PGP conditions and additional case-specific conditions may be imposed.

c. The proposed disposal site for the discharge of dredged or fill material does not comply with the Section 404(b)(1) guidelines for the following reason(s):

- 1) There is a less damaging practicable alternative.....
- 2) The activity
 - a. violates water quality or effluent standards.....
 - b. jeopardizes threatened or endangered species or their habitat.....
 - c. violates marine sanctuary requirements.....
- 3) The proposed discharge will result in significant degradation of the aquatic ecosystem.....
- 4) The proposed discharge does not include practicable and appropriate measures to minimize potential harm to the aquatic ecosystem.....
- 5) Insufficient information to make a reasonable judgement.....

PREPARED BY: Marcia Stillman Dec. 22, 1994
PROJECT MANAGER DATE

FOOTNOTES:

- * 1. A negative, significant, or unknown response indicates that the permit application may not be in compliance with the Section 404(b)(1) guidelines. Summary comments are included.
- 2. See the Environmental Assessment and Statement of Findings for additional discussions.



Commonwealth of Massachusetts
Executive Office of Environmental Affairs

Department of Environmental Protection

William F. Weld
Governor

Trudy Coxe
Secretary, EDEA

Thomas B. Powers
Acting Commissioner

February 27, 1995

Mr. William Lawless
New England Division
Army Corps of Engineers
424 Trapelo Road
Waltham, MA 02154-9149

RE: Massachusetts Programmatic General Permit

Dear Mr. Lawless:

The Massachusetts Department of Environmental Protection (DEP) has reviewed the Programmatic General Permit (PGP) effective March 1, 1995 for minimal impact activities within the Commonwealth. The PGP represents the culmination of discussions between federal, state and local agencies, with the shared goal of clarifying and simplifying the permitting process. The Commonwealth strongly endorses the PGP because it offers consistency with our own strong environmental protection programs.

Under Section 401 of the Clean Water Act, any applicant for a federal permit for any activity involving a discharge to waters and wetlands must obtain a certification from the state where the discharge is located. The state must certify that there is reasonable assurance the discharge as conditioned will meet state water quality standards and other appropriate requirements of state law. Therefore, DEP certifies the PGP with the condition that activities conducted under the PGP are authorized only when:

- a) A Final Order of Conditions under MGL c.131, §40 is obtained for activities subject to jurisdiction as defined in 310 CMR 10.02, and
- b) A waterways license or permit under MGL c.91 is obtained for activities subject to jurisdiction, as defined in 310 CMR 9.05, and
- c) A 401 water quality certification under MGL c.21, §§26-53 is obtained for activities subject to jurisdiction of 314 CMR 9.00 effective March 1, 1995. Activities not requiring an application as specified in 314 CMR 9.03 are certified through this 401 certification of the PGP.

The Commonwealth is grateful for the assistance of Corps staff in the development of the 401 Water Quality Certification regulations. We have benefitted as well from discussions of the PGP by DEP's 401 Advisory Committee, with membership representing the development community, environmental organizations, consultants, agencies, and agricultural interests. The concurrent development of the PGP and the new 401 program has provided the opportunity to ensure long-term compatibility of federal and state programs. We believe that this process has increased environmental protection by clarifying standards and targeting resources, while reducing procedural burdens on applicants.

Sincerely,



Arleen O'Donnell
Acting Deputy Commissioner

AOD/PH/dc



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
NEW ENGLAND DIVISION, CORPS OF ENGINEERS
424 TRAPELO ROAD
WALTHAM, MASSACHUSETTS 02254-9149

February 21, 1995

Regulatory Division
CENED-OD-R

Mr. John DeVillars
Regional Administrator
EPA Region I
JFK Federal Building
Boston, Massachusetts 02254

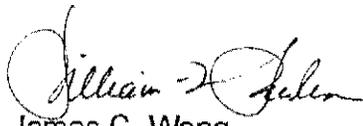
Dear Mr. DeVillars:

This letter is in reference to two separate Department of the Army Programmatic General Permits (PGP) in New England. The first is the recently reissued Massachusetts PGP which has an effective date of March 1, 1995. The second is the proposed Maine PGP for which a Corps of Engineers Public Notice soliciting comments was released today. Copies of both are attached.

It is our intent to replace the nationwide permit program with these general permits in the Commonwealth of Massachusetts and the State of Maine, including for eligible projects requiring Corps of Engineers authorizations on tribal lands. In this regard, EPA is the agency with authority to act on requests for water quality certifications pursuant to section 401 of the Clean Water Act on tribal lands. Therefore, the Corps hereby requests that **EPA issue water quality certification for the Massachusetts PGP and proposed Maine PGP in accordance with 40 CFR Part 121 Subpart C-Certification by the Administrator.**

Please contact Ms. Christine Godfrey of the Regulatory Division at 617-647-8673 if there are any questions. Thank you for your assistance in this matter.

Sincerely,


James C. Wong
Acting District Engineer

Attachments



COASTAL ZONE
MANAGEMENT

The Commonwealth of Massachusetts
Executive Office of Environmental Affairs
100 Cambridge Street
Boston, Massachusetts 02202

February 10, 1995

William F. Lawless
Chief, Regulatory Division
Operations Directorate
U.S. Army Corps of Engineers
New England Division
424 Trapelo Road
Waltham, MA 02254-9149

Re: Federal Consistency Certification: Massachusetts
Programmatic General Permit; Statewide.

Dear Mr. Lawless:

The Massachusetts Coastal Zone Management (MCZM) Office has completed its review of the proposed final Massachusetts Programmatic General Permit (PGP).

We concur with your certification and find that the activity as proposed is consistent with the MCZM enforceable program policies.

If the above-referenced proposal, which has received this concurrence from MCZM, is modified in any manner or is noted to be having effects on the coastal zone or its uses that are substantially different than originally proposed, please submit an explanation of the nature of the change to this Office pursuant to 301 CMR 21.17 and 15 CFR 930.66.

Thank you for your cooperation with MCZM.

Sincerely,

Margaret M. Brady
Director

RECEIVED

MMB/JWM

cc: Christine Godfrey, Chief
Policy Analysis Branch, US Army Corps of Engineers
Karen Kirk Adams, Chief
Regulatory Branch, US Army Corps of Engineers
Carl Dierker, Acting Director
Wetlands and Waterways, Massachusetts DEP



Nashua River Watershed Association

592 MAIN STREET, GROTON, MASSACHUSETTS 01450 508-448-0299 FAX 508-448-0911

January 30, 1995

Christine Godfrey
Chief, Programs and Policy Regulatory Division
U.S. Army Corps of Engineers
424 Trapelo Road
Waltham, MA. 02254-9149

Dear Ms. Godfrey,

I am submitting to you our comments for the Public Notice file #199301040, Issuance of Programmatic General Permit and Revocation of Nationwide Permits in Massachusetts.

- 1) Under Programmatic General Permit Conditions, E.14, you require the use of mats in wetland area to minimize soil and vegetation disturbance. However, you go on to require that only preconstruction contours are restored. The NRWA would recommend that language should be included to ensure that site vegetation also be restored using native, non-invasive species.
- 2) Under Programmatic General Permit Conditions, E.15, you require that temporary fill areas be restored to their original contours. The NRWA would recommend that language should be included to ensure that site vegetation also be restored using native, non-invasive species.
- 3) Under Programmatic General Permit Conditions, E.16, you require that sedimentation and erosion control be required to reduce erosion and retain sediment on-site during and after construction. The NRWA recommends that more specific performance standards for sedimentation and erosion control be described. Our specific recommendations would be the performance standards included in the Coastal Zone Reauthorization Amendments of 1990, Section 6217, Guidance Specifying Management Measures for Sources of Nonpoint Source Pollution in Coastal Waters.

I appreciate the opportunity to comment on this public notice.

Sincerely,


Elizabeth Ainsley Campbell
Executive Director

RECEIVED



US Army Corps
of Engineers
New England Division
424 Trapelo Road
Waltham, MA 02254-9149

Public Notice

Date: JANUARY 3, 1995
Comment Period Closes: _____
File No: 199301040
In Reply Refer To: Christine A. Godfrey

ISSUANCE OF PROGRAMMATIC GENERAL PERMIT AND REVOCATION OF NATIONWIDE PERMITS IN MASSACHUSETTS

THE NEW ENGLAND DIVISION OF THE U.S. ARMY CORPS OF ENGINEERS, 424 TRAPELO ROAD, WALTHAM, MASSACHUSETTS 02254-9149 hereby issues a Programmatic General Permit (PGP) for Massachusetts pursuant to 33 CFR Part 325.5 (c) (3). The Massachusetts PGP provides a simplified review process for minimal-impact activities within the Commonwealth of Massachusetts that are subject to Corps jurisdiction under Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act of 1899. This follows use of the initial PGP for a trial period that started August 24, 1993. A copy of the new PGP is attached, with minor revisions from the initial PGP.

The effective date of the new PGP is March 1, 1995. The current PGP is hereby extended to February 29, 1995.

These dates are to coordinate with the Massachusetts Department of Environmental Protection (DEP) changes to the 401 water quality certification regulations. At that time, the 401 requirements on page 9 of the new PGP will be revised to reflect the changes.

At the same time, the Division Engineer has made a decision regarding a proposal to exercise his discretionary authority pursuant to 33 CFR 330.5 to revoke the Nationwide permits in Massachusetts. These proposals were announced in a public notice issued on May 3, 1994. The PGP replaces the Nationwide permits and other permitting mechanisms formerly in use in Massachusetts, including Regional General Permits and Letters of Permission.

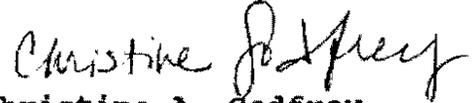
All PGP authorizations are subject to the applicability requirements, procedures and conditions contained in the PGP as attached. Project eligibility under the PGP falls into two categories, non-reporting projects (Category I) and projects that will be screened by the Corps and federal resource agencies for a determination of minimal cumulative and individual impacts (Category II).

Category III activities, Category I and II projects that do not meet all the terms and conditions of the PGP, and projects for which the Corps has decided to exert Discretionary Authority (see Condition 4 of the PGP) will require an individual permit. The individual permit review process, federal exemptions, and work

grandfathered pursuant to 33 CFR Part 330.3 (activities occurring before certain dates) are not affected by this PGP. Other activities grandfathered from the provisions of the new PGP are described in Condition 32 of the PGP (attached).

REVISIONS FROM THE INITIAL PGP: Some revisions have been included in the new PGP. Applicants are responsible for reviewing the new PGP and insuring they comply with its terms and conditions as of the effective date of March 1, 1995.

Sincerely,



Christine A. Godfrey
Chief, Programs and Policy
Regulatory Division

SEE REVERSE SIDE FOR
DETAILS OF EVALUATION
FACTORS

The decision whether to issue a permit will be based on an evaluation of the probable impact of the proposed activity in the public interest. That decision will reflect the national concern for both protection and utilization of important resources. The benefit which may reasonable accrue from the proposal must be balanced against its reasonably foreseeable detriments. All factors which may be relevant to the proposal will be considered, including the cumulative effects thereof; among those are: conservation, economics, aesthetics, general environmental concerns, wetlands, cultural values, fish and wildlife values, shoreline erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food production and, in general, the needs and welfare of the people.

Where the activity involves the discharge of dredged or fill material into waters of the United States or the transportation of dredged material for the purpose of disposing it in ocean waters, the evaluation of the impact of the activity in the public interest will also include application of the guidelines promulgated by the Administrator, U.S. Environmental Protection Agency, under authority of Section 404(b) of the Clean Water Act, and/or Section 103 of the Marine Protection Research and Sanctuaries Act of 1972 as amended.

Based on his initial review, the District Engineer has determined that little likelihood exists for the proposed work to impinge upon properties listed in or eligible for listing in the National Register of Historic Places, and no further consideration of the requirements of the Preservation of Historical and Archaeological Data Act of 1974 is necessary. This determination is based on one or more of the following:

- a. The permit area has been extensively modified by previous work.
- b. The permit area has been recently created.
- c. The proposed activity is of limited nature and scope.
- d. Review of the latest published version of the National Register shows that no presence of registered properties or properties listed as being eligible for inclusion therein are in the permit area or general vicinity.

Presently, unknown archaeological, scientific, pre-historic or historical data may be lost or destroyed by work to be accomplished under the requested permit.

Pursuant to the Endangered Species Act, the District Engineer is hereby requesting that the appropriate Federal Agency provide comments regarding the presence of and potential impacts to listed species or its critical habitat.

The initial determinations made herein will be reviewed in light of facts submitted in response to this notice.

The following authorizations have been applied for, or have been, or will be obtained:

- () Permit, License or Assent from the State.
- () Permit from Local Wetland Agency or Conservation Commission.
- (X) Water Quality Certification in accordance with Section 401 of the Clean Water Act.

The States of Connecticut, Maine, Massachusetts, New Hampshire and Rhode Island have approved Coastal Zone Management Programs. Where applicable the applicant states that any proposed activity will comply with and will be conducted in a manner that is consistent with the approved Coastal Zone Management Program. Issuance of a State permit from the appropriate State agency will indicate concurrence with this statement of Consistency.

All comments will be considered a matter of public record. Copies of letters of objection will be forwarded to the applicant who will normally be requested to contact objectors directly in an effort to reach an understanding.

THIS NOTICE IS NOT AN AUTHORIZATION TO DO ANY WORK.

If you would prefer not to continue receiving public notices, please check here () and return this portion of the public notice to: U.S. Army Corps of Engineers - New England Division, Attn: Regulatory Division, Bldg 108N, 424 Trapelo Road, Waltham, MA 02254-9149.

NAME: _____

ADDRESS: _____



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
NEW ENGLAND DIVISION, CORPS OF ENGINEERS
424 TRAPELO ROAD
WALTHAM, MASSACHUSETTS 02254-9149

CENED-OD-R
1993-01040

Effective Date: January 1, 1995
Expiration Date: February 29, 1995

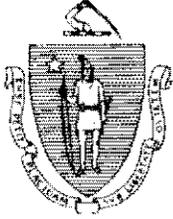
AMENDMENT TO
DEPARTMENT OF THE ARMY PROGRAMMATIC GENERAL PERMIT
COMMONWEALTH OF MASSACHUSETTS

The New England Division of the U.S. Army Corps of Engineers hereby amends the Massachusetts Programmatic General Permit (PGP) issued August 24, 1993, as follows:

The current expiration date of the PGP shall be extended to February 29, 1995.

A handwritten signature in black ink, appearing to read "W. F. Lawless".

William F. Lawless, P.E.
Chief, Regulatory Division
Operations Directorate



COASTAL ZONE
MANAGEMENT

The Commonwealth of Massachusetts
Executive Office of Environmental Affairs
100 Cambridge Street
Boston, Massachusetts 02202

December 28, 1994

Mr. William Lawless
Chief, Regulatory Division
U.S. Army Corps of Engineers
424 Trapelo Road
Waltham, MA 02254-9149

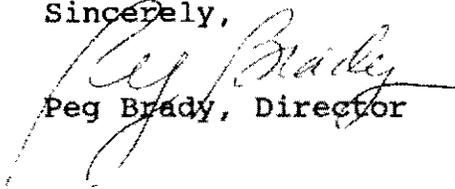
Dear Mr. Lawless:

The existing Massachusetts Programmatic General Permit (PGP) is set to expire on December 31, 1994. The Massachusetts Office of Coastal Zone Management (MCZM) requests that the Corps extend the current PGP until March 1, 1995. The purpose of this extension is to achieve coordination with the Massachusetts Department of Environmental Protection's (DEP) 401 Water Quality Certification Regulations.

The Corps, DEP, MCZM, and other federal resource agencies have engaged in the cooperative effort of developing the PGP for the past two years. DEP has simultaneously been revising its 401 program, and MCZM has been streamlining its federal consistency procedures, to increase environmental protection while reducing procedural requirements wherever possible. MCZM and DEP believe that a concurrent schedule will minimize the inevitable confusion that accompanies regulatory change, while providing our agencies the opportunity to jointly publicize this streamlining effort.

Please let me know if you have any questions.

Sincerely,


Peg Brady, Director

cc: Chris Godfrey
Monica Stillman
Arleen O'Donnell, DEP
Carl Dierker, DEP
Robert Golledge, DEP
Pamela Harvey, DEP
Jane Mead, MCZM



Commonwealth of Massachusetts
Executive Office of Environmental Affairs

Department of Environmental Protection

William F. Weld
Governor

Trudy Coxe
Secretary, EOE

Thomas B. Powers
Acting Commissioner

December 30, 1994

Christine Godfrey
New England Division
Corps of Engineers
424 Trapelo Road
Waltham, MA 02254-9149

Dear Ms. Godfrey:

The Department of Environmental Protection requests that its 401 Water Quality Certification of the Interim PGP be extended until the Interim Programmatic General Permit (PGP) expires on February 28, 1995. Prior to that date, the Department will issue its certification of the final PGP with its effective date of March 1, 1995, after public notice and the promulgation of the 401 program regulations.

We appreciate your cooperation as we near the completion of the development of the Department's 401 program and the Corps' PGP. We continue to believe that this process will yield benefits to our applicants and to the environment of the Commonwealth.

Sincerely, pdt

Carl Dierker

Carl Dierker
Acting Director
Division of Wetlands and
Waterways

pgp1229



REPLY TO
ATTENTION GF

DEPARTMENT OF THE ARMY
NEW ENGLAND DIVISION, CORPS OF ENGINEERS
424 TRAPELO ROAD
WALTHAM, MASSACHUSETTS 02254-9149

REVOCATION OF NATIONWIDE PERMITS
EFFECTIVE IN MASSACHUSETTS
MARCH 1, 1995

The Nationwide Permits are hereby revoked in Massachusetts pursuant to the procedures at 33 CFR Part 330.5, as of March 1, 1995. Refer to 33 CFR Appendix A for complete text of the Nationwide Permits.

This Nationwide Permit revocation does not apply to the Corps of Engineers Civil Works program.

William T. Scully DDE *12/29/94*
for Earle C. Richardson date
Colonel, Corps of Engineers
Division Engineer

STATEMENT OF FINDINGS AND DECISION
PROPOSAL FOR REVOCATION OF NATIONWIDE PERMITS
IN MASSACHUSETTS

1. **PROPOSAL** On August 24, 1993, the New England Division Corps of Engineers suspended the Nationwide permits in Massachusetts, concurrent with issuance of a Programmatic General Permit (PGP) to regulate minimal-impact work. The PGP was issued for a trial period, which is to be extended to March 1, 1995, at which time the final PGP will be issued for a 5-year period. On May 3, 1994, we issued a public notice describing the proposed revisions to the PGP, and the proposal to revoke the Nationwide permits in Massachusetts.

The proposal to revoke the Nationwide permits in Massachusetts and replace them with the PGP follows similar actions taken in New Hampshire that have streamlined the Corps regulatory program and aligned Corps review the state regulatory programs. The Massachusetts Wetlands Protection Act provides a strong wetland program that combines local (Conservation Commission) review with Department of Environmental Protection (DEP) oversight. The DEP and Office of Coastal Zone Management have worked with the Corps to provide a consistent, fair regulatory program including the PGP. Revisions proposed with reissuance of the PGP will increase coordination with the state agencies and should further increase the efficiency of our program.

2. **AUTHORITY** Discretionary Authority is defined at 33 CFR 330.4(e). The authority of the Division Engineer to assert his discretionary authority is found at 33 CFR 330.5. The Division Engineer may use his discretionary authority to modify, suspend, or revoke Nationwide permit authorization for any specific geographic area, including on a statewide basis, by issuing a public notice stating his concerns regarding the environment, give opportunity for comment and opportunity to request a public hearing, consider fully the views of affected parties, prepare a statement of findings including comments received and how substantive comments were considered, notify affected parties of the modification, suspension, or revocation, including effective date, and provide, if appropriate, a grandfathering period.

3. **COMMENTS RECEIVED** A total of 5 comment letters were received in response to the public notice announcing reissuance of the PGP and revocation of the Nationwide permits. No objections to this proposal were received, although several objections to proposed PGP changes have been evaluated (see Environmental Assessment and Statement of Findings, EASOF, prepared for reissuance of the PGP).

The federal agencies have indicated their support of the PGP in place of the Nationwide permits. EPA stated that they believe the PGP has increased efficiency and effectiveness of the regulatory program. In general, informal responses from the public have been in favor of the PGP. The Massachusetts

Department of Environmental Protection, and Office of Coastal Zone Management, continue to support the concept and goals of the PGP in favor of the former Nationwide permit program.

4. **SUMMARY AND DECISION** A detailed evaluation of use of the PGP during the trial period, including some comparisons to the Nationwide permit program, is contained in the EASOF prepared for reissuance of the PGP. In general, the PGP has resulted in the Corps reviewing more minimal-impact work in Massachusetts, while processing applications in less time. We are processing less individual permits than under the Nationwide permits. Therefore, we appear to be meeting our goals of increasing the effectiveness (environmental protection) and efficiency (quick response time) of the PGP.

The PGP has also increased consistency and coordination between the federal and state regulatory programs. Modifications to the CZM review process should further increase federal/state coordination. The result is a more predictable, efficient, and less costly regulatory program for the regulated public in Massachusetts than occurred under the former Nationwide permit program.

5. **REVIEW OF ACTIONS** The Division Engineer retains the right to review the effect of these actions, and to revise or rescind these decisions if the public interest warrants. Unless specifically revised or rescinded, the decisions made herein remain in effect for five years from March 1, 1995.

6. **IMPLEMENTATION** The proposals adopted herein will be effective on March 1, 1995. All Category I activities commenced or under contract prior to that date, in reliance upon the non-reporting work of the previous PGP, shall remain authorized provided they are completed within 12 months of March 1, 1995.

The revocation of Nationwide permits does not apply to the Corps Civil Works program.

William T. Scully DDE 12/29/94
for Earle C. Richardson date
Colonel, Corps of Engineers
Division Engineer

STATEMENT OF FINDINGS AND DECISION
PROPOSAL FOR REVOCATION OF NATIONWIDE PERMITS
IN MASSACHUSETTS

1. **PROPOSAL** On August 24, 1993, the New England Division Corps of Engineers suspended the Nationwide permits in Massachusetts, concurrent with issuance of a Programmatic General Permit (PGP) to regulate minimal-impact work. The PGP was issued for a trial period, which is to be extended to March 1, 1995, at which time the final PGP will be issued for a 5-year period. On May 3, 1994, we issued a public notice describing the proposed revisions to the PGP, and the proposal to revoke the Nationwide permits in Massachusetts.

The proposal to revoke the Nationwide permits in Massachusetts and replace them with the PGP follows similar actions taken in New Hampshire that have streamlined the Corps regulatory program and aligned Corps review the state regulatory programs. The Massachusetts Wetlands Protection Act provides a strong wetland program that combines local (Conservation Commission) review with Department of Environmental Protection (DEP) oversight. The DEP and Office of Coastal Zone Management have worked with the Corps to provide a consistent, fair regulatory program including the PGP. Revisions proposed with reissuance of the PGP will increase coordination with the state agencies and should further increase the efficiency of our program.

2. **AUTHORITY** Discretionary Authority is defined at 33 CFR 330.4(e). The authority of the Division Engineer to assert his discretionary authority is found at 33 CFR 330.5. The Division Engineer may use his discretionary authority to modify, suspend, or revoke Nationwide permit authorization for any specific geographic area, including on a statewide basis, by issuing a public notice stating his concerns regarding the environment, give opportunity for comment and opportunity to request a public hearing, consider fully the views of affected parties, prepare a statement of findings including comments received and how substantive comments were considered, notify affected parties of the modification, suspension, or revocation, including effective date, and provide, if appropriate, a grandfathering period.

3. **COMMENTS RECEIVED** A total of 5 comment letters were received in response to the public notice announcing reissuance of the PGP and revocation of the Nationwide permits. No objections to this proposal were received, although several objections to proposed PGP changes have been evaluated (see Environmental Assessment and Statement of Findings, EASOF, prepared for reissuance of the PGP).

The federal agencies have indicated their support of the PGP in place of the Nationwide permits. EPA stated that they believe the PGP has increased efficiency and effectiveness of the regulatory program. In general, informal responses from the public have been in favor of the PGP. The Massachusetts

Department of Environmental Protection, and Office of Coastal Zone Management, continue to support the concept and goals of the PGP in favor of the former Nationwide permit program.

4. **SUMMARY AND DECISION** A detailed evaluation of use of the PGP during the trial period, including some comparisons to the Nationwide permit program, is contained in the EASOF prepared for reissuance of the PGP. In general, the PGP has resulted in the Corps reviewing more minimal-impact work in Massachusetts, while processing applications in less time. We are processing less individual permits than under the Nationwide permits. Therefore, we appear to be meeting our goals of increasing the effectiveness (environmental protection) and efficiency (quick response time) of the PGP.

The PGP has also increased consistency and coordination between the federal and state regulatory programs. Modifications to the CZM review process should further increase federal/state coordination. The result is a more predictable, efficient, and less costly regulatory program for the regulated public in Massachusetts than occurred under the former Nationwide permit program.

5. **REVIEW OF ACTIONS** The Division Engineer retains the right to review the effect of these actions, and to revise or rescind these decisions if the public interest warrants. Unless specifically revised or rescinded, the decisions made herein remain in effect for five years from March 1, 1995.

6. **IMPLEMENTATION** The proposals adopted herein will be effective on March 1, 1995. All Category I activities commenced or under contract prior to that date, in reliance upon the non-reporting work of the previous PGP, shall remain authorized provided they are completed within 12 months of March 1, 1995.

The revocation of Nationwide permits does not apply to the Corps Civil Works program.

Earle C. Richardson
Colonel, Corps of Engineers
Division Engineer

PM *mjs*
BR CH *ch*
DIV *dl*
DIR OF *dl*
EXEC OFC
DIST ENG
DIV ENG *Earle*



DEPARTMENT OF THE ARMY
 NEW ENGLAND DIVISION, CORPS OF ENGINEERS
 424 TRAPELO ROAD
 WALTHAM, MASSACHUSETTS 02254-9149

REPLY TO
 ATTENTION OF

REVOCATION OF NATIONWIDE PERMITS
 EFFECTIVE IN MASSACHUSETTS
 MARCH 1, 1995

The Nationwide Permits are hereby revoked in Massachusetts pursuant to the procedures at 33 CFR Part 330.5, as of March 1, 1995. Refer to 33 CFR Appendix A for complete text of the Nationwide Permits.

This Nationwide Permit revocation does not apply to the Corps of Engineers Civil Works program.

 Earle C. Richardson date
 Colonel, Corps of Engineers
 Division Engineer

PM *mjs*
 BR CH *cy*
 DIV *ell*
 DIR *ell*
 EXEC OFC

DIST ENG
for held
 DIV ENG

FACSIMILE TRANSMITTAL HEADER SHEET

For use of this form, see AR 25-11, the proponent agency is GCEC4

COMMAND/ OFFICE		NAME/ OFFICE SYMBOL		OFFICE TELEPHONE NO. (AUTOVON/Comm.)		FAX NO. (AUTOVON/Comm.)	
FROM		NAME/ OFFICE SYMBOL		OFFICE TELEPHONE NO. (AUTOVON/Comm.)		FAX NO. (AUTOVON/Comm.)	
Monica Stillman		CEWEDODR		617-647 8152			
TO:		NAME/ OFFICE SYMBOL		OFFICE TELEPHONE NO. (AUTOVON/Comm.)		FAX NO. (AUTOVON/Comm.)	
Bob Gullidge		MA DEP		617-292-5946		(617) 556-1049	
CLASSIFICATION	PRECEDENCE	NO. PAGES (including this Header)	DATE-TIME	MONTH	YEAR	RELEASER'S SIGNATURE	
		15 15	28	12	94		

REMARKS

Space Below For Communications Center Use Only

DA FORM 3918-R, JUL 93

DA FORM 3918-R, AUG 72 IS OBSOLETE

USAFPO VOL 1

MA PGP with changes we discussed.

Also note changes requested by Chris Gidley.

- ① p. 1 paragraphs: "this proposal" changed to "general permit" at very end of paragraph.
- ② Condition 9 reworded to include areas within 0.25 mile of wild + scenic River segments.
- ③ Condition 14 expanded to clarify that mats may be a discharge of fill.
- ④ Category sheets: "excavation" changed to "excavation discharges" for all fill descriptions.
- ⑤ Category headings added to all pages.

Thanks,
Monica Stillman

TELEPHONE OR VERBAL CONVERSATION RECORD <small>For use of this form, see AR 340-15; the proponent agency is The Adjutant General's Office.</small>	<small>DATE</small> Dec. 28, 1994
--	--------------------------------------

SUBJECT OF CONVERSATION
 MA PGP / 401

INCOMING CALL		
PERSON CALLING Bob Gokledge	ADDRESS MA DEP	PHONE NUMBER AND EXTENSION 292-5946

PERSON CALLED M. Stillman	OFFICE Reg B	PHONE NUMBER AND EXTENSION 78152
-------------------------------------	------------------------	--

OUTGOING CALL		
PERSON CALLING	OFFICE	PHONE NUMBER AND EXTENSION

PERSON CALLED	ADDRESS	PHONE NUMBER AND EXTENSION
----------------------	----------------	-----------------------------------

SUMMARY OF CONVERSATION

March 1 date is ok.
 I will fax him copy with our changes - based on their request. [FAX: 556-1049]

They will be adding an addendum to DOI form, prior to ~~the~~ formally revising the forms, with a check off along the lines of "I have identified and shown all isolated wetlands on the site plans". They may also add subtotal calcs for impact areas.

They expect to have a better tracking system in operation in Feb. I told him that I would be recommending that we continue to consider closer coordination on Cat. I work (ie. Corps review monthly at regional offices) to prevent separate applications to the Corps.

TELEPHONE OR VERBAL CONVERSATION RECORD		DATE
For use of this form, see AR 340-15; the proponent agency is The Adjutant General's Office.		12-27-94
SUBJECT OF CONVERSATION MA PGP- DEP review		
INCOMING CALL		
PERSON CALLING Bob Gollidge	ADDRESS MA DEP	PHONE NUMBER AND EXTENSION 292-5946
PERSON CALLED M. Stillman	OFFICE Reg B	PHONE NUMBER AND EXTENSION 78152
OUTGOING CALL		
PERSON CALLING	OFFICE	PHONE NUMBER AND EXTENSION
PERSON CALLED	ADDRESS	PHONE NUMBER AND EXTENSION
SUMMARY OF CONVERSATION		
<p>C2M response to current plan - ok ✓</p> <p>WQC language add: "until replaced by revised regulations in early 1995" Eliminate footnote 1 - replace in text with "see p. 9 for '90 WQC requirements."</p> <p>Eliminate footnote 2 - replace with - "see condition 2"</p> <p>Condition 2 - can we remove examples - confusing. could add: rather than relying solely on state criteria. Underlined segment appears strong enough.</p> <p>March 1 → April 1 instead? They are discussing today & he will let me know first thing tomorrow.</p> <p>Changes to p. 8 - addressed etc.</p>		

FACSIMILE TRANSMITTAL HEADER SHEET

For use of this form, see AR 35-14, the proponent agency is GCI&CA

COMMAND/ OFFICE		NAME/ OFFICE SYMBOL		OFFICE TELEPHONE NO (AUTOVON/Comm.)		FAX NO. (AUTOVON/Comm.)	
FROM: <i>Monica Stillman</i>		<i>CENED-DD-R</i>					
TO: <i>Bob Gollidge</i>		<i>VMA DEP</i>				<i>556-1049</i>	
CLASSIFICATION	PRECEDENCE	NO. PAGES (Including this Header)	DATE-TIME	MONTH	YEAR	RELEASER'S SIGNATURE	
		<i>15</i>	<i>202</i>	<i>12</i>	<i>94</i>		

REMARKS

Space Below For Communications Center Use Only

DA FORM 3518-R, JUL 92

DA FORM 3518-R, AUG 72 IS OBSOLETE

USE PREVIOUS EDITIONS

Bob: Complete, up-to-date PGP.

Fish and Wildlife Service may be lobbying for the following:

- (a) Inland bank stabilization projects all Category II.*
 - (b) More definitive language in conditions to protect wildlife functions, eg. nesting, hibernating areas etc.*
- We are not likely to make any further changes but if so I will let you know.*

Plan is to print final next week, send out with a notice Jan. 3. Let me know if you have concerns with 401 section!

Thanks!

Monica Stillman

FACSIMILE TRANSMITTAL HEADER SHEET

For use of this form, see AR 31-11, if the proponent agency is OCISGA

COMMAND/ OFFICE		NAME/ OFFICE SYMBOL		OFFICE TELEPHONE NO. (AUTOVON/Comm.)		FAX NO. (AUTOVON/Comm.)	
FROM: Monica Stillman		CEWED ODR					
TO: Lois Bruinooge		CZM				617-727-2754	
CLASSIFICATION	PRECEDENCE	NO. PAGES (Including this Header) 15	DATE-TIME 22	MONTH 12	YEAR 94	RELEASER'S SIGNATURE	
REMARKS							

Space Below For Communications Center Use Only

DA FORM 3918-R, JUL 94

DA FORM 3918-R, AUG 72 IS OBSOLETE

USAFPO VC 12

Lois: Complete, up-to-date P&P.

Fish and Wildlife Service may be lobbying for the following:

- (a) All inland bank stabilization projects in Category II.
- (b) more definitive language in conditions to protect wildlife functions, eg. nesting/hibernating areas, etc.

We are not likely to make any further changes but I will let you know if we do.

Plan is to print final version next week, mail out with public notice Jan. 3. Let me know if you have any final comments or concerns - asap!

Thank you for all your help!

Monica Stillman

TELEPHONE OR VERBAL CONVERSATION RECORD

For use of this form, see AR 340-15; the proponent agency is The Adjutant General's Office.

DATE

Dec 20, 1994

SUBJECT OF CONVERSATION

FWS. MA PGP.

INCOMING CALL

PERSON CALLING

Vern Lang

ADDRESS

FWS Concord MA

PHONE NUMBER AND EXTENSION

603-225-1411

PERSON CALLED

M. Stillman

OFFICE

Reg B

PHONE NUMBER AND EXTENSION

15152

OUTGOING CALL

PERSON CALLING

OFFICE

PHONE NUMBER AND EXTENSION

PERSON CALLED

ADDRESS

PHONE NUMBER AND EXTENSION

SUMMARY OF CONVERSATION

Called to discuss draft EA.

1) Boreal Stabilization - Listed sp. Plymouth red-bellied turtle should be included as a sp to be concerned about in SE Mass. FWS is involved in a project to have them in captivity + release.

SE Mass has substantial boreal stabil. applications program.

~60-70.

Endangered sp. condition - puts burden of proof on appl

Burden is actually a federal burden.

2) Condition 19-21. Same discussions as previous. He will try to think of wording for Cond. 21 that will emphasize importance of wildlife resources without pulling in more work from Cat I + Cat II.

"first avoid, then minimize, impacts to critical life cycle functions of ..."

Response: Difficult to figure out what that calls, difficult to implement. We prefer old wording.

TELEPHONE OR VERBAL CONVERSATION RECORD

For use of this form see AR 340-13. The procuring agency is The Adjutant General's Office.

SUBJECT OF CONVERSATION

INCOMING CALL		
PERSON CALLING	ADDRESS	PHONE NUMBER AND EXTENSION

PERSON CALLED	OFFICE	PHONE NUMBER AND EXTENSION

OUTGOING CALL		
PERSON CALLING	OFFICE	PHONE NUMBER AND EXTENSION

PERSON CALLED	ADDRESS	PHONE NUMBER AND EXTENSION

SUMMARY OF CONVERSATION

He doesn't believe a lower size threshold is appropriate. They generally like in groups but may be individuals scattered up and down-stream. They are small - eg 1 cm - and difficult to find.

6. Water crossing restrictions:

e.o.y: don't want to extend beyond Oct. 1 → Oct-Dec is when brook & brown trout and land-locked Salmon run, eggs in incubation until spring.

Work within a tightly-sealed cofferdam would be allowed, through screening.

Cofferdam: placing, removal, maintenance
 pumping flow around site or through culvert.
 return flow from dewatering

TELEPHONE OR VERBAL CONVERSATION RECORD

For use of this form, see AR 340-15; the proponent agency is The Adjutant General's Office.

DATE

Dec. 20, 1994

SUBJECT OF CONVERSATION

401 Regulations

INCOMING CALL

PERSON CALLING Bob Gollegh	ADDRESS DEP	PHONE NUMBER AND EXTENSION
PERSON CALLED M. Stillman	OFFICE Reg	PHONE NUMBER AND EXTENSION 78152

OUTGOING CALL

PERSON CALLING	OFFICE	PHONE NUMBER AND EXTENSION
PERSON CALLED	ADDRESS	PHONE NUMBER AND EXTENSION

SUMMARY OF CONVERSATION

- Status: Environmental groups may complain to governor on handling of ORWS.
- Final revised draft will be distributed to advisory committee Dec. 31 - they know some on committee will object. Committee meeting Jan. 6.
 - To Water Resources Div. at a meeting Jan. 1 for their review and approval (don't anticipate objections).
 - File with sec. after that.

They can meet with sec. for initial review and get the notice in the next Environmental Monitor. ³⁰ ~~21~~-day review period for WRC; 21-day for CEM.

If we issue, CEM is likely to challenge waiver. We can extend, issue PU with new PGP attached. We need a firm extension date: March 1, 1995. We will proceed with new PGP at that date regardless of 401 status. Should have completed ⁴⁰¹ ~~(WRC)~~ CEM procedural requirements by then.

TELEPHONE OR VERBAL CONVERSATION RECORD

File use of this form - see AR 310-15. The proponent agency is The Adjutant General's Office.

Dec. 2, 1994

SUBJECT OF CONVERSATION

NPS. - MA PGP

INCOMING CALL

PERSON CALLING Jannie Fostburgh	ADDRESS NPS Boston	PHONE NUMBER AND EXTENSION 617-223- 5131 5131
PERSON CALLED M. Stillman	OFFICE Reg B	PHONE NUMBER AND EXTENSION 78152

OUTGOING CALL

PERSON CALLING	OFFICE	PHONE NUMBER AND EXTENSION
PERSON CALLED	ADDRESS	PHONE NUMBER AND EXTENSION

SUMMARY OF CONVERSATION

1) They are concerned with language added to Condition 9 on "if approved by NPS". May be confusing to public as to what that means, and it may lead to people coming to them directly for approvals. They would prefer to have it removed.

2) Unclear on status / coordination for tributaries and up- and down-stream projects. May be best to meet to discuss types of Cat. I work.

Possible days: Wed. a.m. Dec. 7 (he must be back to Boston by 1 pm)
any day the following week

FACSIMILE TRANSMITTAL HEADER SHEET

For use of this form, see AR 25-11, the proper agency is ODICC.

COMMAND/ OFFICE		NAME/ OFFICE SYMBOL		OFFICE TELEPHONE NO. (AUTOVON/Comm.)		FAX NO (AUTOVON/Comm.)	
FROM Monica Stillman		CEJED-OD-R		617-647-8152			
TO Chris Mantzani's		DMFS		508-281-9300		508-281-9301	
CLASSIFICATION	PRECEDENCE	NO. PAGES (Including this Header)	DATE-TIME	MONTH	YEAR	RELEASER'S SIGNATURE	
		6	13	12	94		

REMARKS

Space Below For Communications Center Use Only

DA FORM 3918-R, JUL 89

DA FORM 3918-R, AUG 72 IS OBSOLETE

USAFPS V2 15

Chris:

Attached sheets are draft of EASOF for Massachusetts PGP reissuance - describing changes and outstanding federal agency concerns. If you feel we have adequately responded to the concerns let me know. Otherwise contact Bill Lawless to discuss.

Unfortunately Bill is out until week of Dec. 19- He will be in Tues. Dec. 20 and we hope to prepare final version to publish that week. Sorry for any inconvenience but we hope to resolve any outstanding concerns that week. Thanks for your time and assistance, and thanks to Jan K. for his thoughtful review and comments!

Monica Stillman

FACSIMILE TRANSMITTAL HEADER SHEET

For use of this form, see AR 25-11, the proponent agency is ODJCSA

COMMAND/ OFFICE		NAME/ OFFICE SYMBOL		OFFICE TELEPHONE NO. (AUTOVON/Comm.)		FAX NO (AUTOVON/Comm.)	
FROM: Monica Stillman		CEJED-OD-R		617-647-8152			
TO: Ron Manfredonia		EPA				617-565-4941	
CLASSIFICATION	PRECEDENCE	NO. PAGES (Including this Header)	DATE-TIME	MONTH	YEAR	RELEASER'S SIGNATURE	
		6	13	12	94		
REMARKS							

Space Below For Communications Center Use Only

DA FORM 3918-R, JUL 93

DA FORM 3918-R, AUG 72 IS OBSOLETE

USAFPO V.1.10

Ron Manfredonia:

Attached sheets are draft of EASOF for Massachusetts PGP reissuance - describing changes and outstanding federal agency concerns. If you feel we have adequately responded to the concerns let me know. Otherwise please contact Bill Lawless to discuss.

Unfortunately Bill is out of the office until Tues. Dec. 20, and we hope to make all final revisions/changes that week. Hopefully we can take care of any outstanding issues early that week. Thanks to you and your staff for continued review and assistance.

Monica Stillman

FACSIMILE TRANSMITTAL HEADER SHEET

For use of this form, see AF 25-11, the proponent agency is GDISC4

COMMAND/ OFFICE	NAME/ OFFICE SYMBOL	OFFICE TELEPHONE NO. (AUTOVON/Comm.)	FAX NO (AUTOVON/Comm.)
FROM: <i>Monica Stillman</i>	<i>CEWED-OD-R</i>	<i>617-647-8152</i>	
TO:			
<i>Gordon Beckett</i>	<i>FWS</i>		<i>603 225 1467</i>

CLASSIFICATION	PRECEDENCE	NO. PAGES (Including this Header) <i>6</i>	DATE-TIME <i>12</i>	MONTH <i>12</i>	YEAR <i>94</i>	RELEASER'S SIGNATURE
----------------	------------	---	------------------------	--------------------	-------------------	----------------------

REMARKS

Space Below For Communications Center Use Only

DA FORM 3918-R, JUL 90

DA FORM 3918-R, AUG 72 IS OBSOLETE

USAFPC V2 10

Gordon Beckett: Attached sheets are draft of EA 50F for Massachusetts PGP - describing changes and outstanding federal agency concerns. If you feel we have adequately responded to the concerns please let me know. Otherwise please contact Bill Lawless to discuss.

Unfortunately Bill is out until Tues. Dec. 20, and we hope to make final changes that week. Hopefully we can resolve any outstanding issues that week! Thank you for your continued assistance.

Monica Stillman

TELEPHONE OR VERBAL CONVERSATION RECORD

Form of this title, see AR 340 (1), the procuring agency is The Adjutant General's Office

Dec. 5, 1994

SUBJECT OF CONVERSATION

MA PGP - CZM

INCOMING CALL

PERSON CALLING	ADDRESS	PHONE NUMBER AND EXTENSION
PERSON CALLED	OFFICE	PHONE NUMBER AND EXTENSION

OUTGOING CALL

PERSON CALLING	OFFICE	PHONE NUMBER AND EXTENSION
M. Stillman	Reg B	78152
PERSON CALLED	ADDRESS	PHONE NUMBER AND EXTENSION
Lois Bruinoye	CZM	617-727-2754 x423

SUMMARY OF CONVERSATION

They have only one minor comment on text: add for emphasis under Cat. III procedures that individual WOC and CZM are required if IP required.

But: to issue consistency - they need to publish in the environmental monitor. They need final language to publish, could put in the next monitor (issue every 2 weeks) and publish 30-day notice period. After 30-day "monitor" review period they could issue.

CZM also believes Corps waiting to issue applies leverage to the 401 advisory comm. to push them to complete their rego. Response: per Chris to: if that is the case we would assume a waiver.

TELEPHONE OR VERBAL CONVERSATION RECORD

Dec. 5, 1994

FORM DA FORM 751 APR 66 (See AR 340-11, the predecessor agency to The Adjutant General's Office)

SUBJECT OF CONVERSATION

MA PGP - Bank Stabilization

INCOMING CALL

PERSON CALLING	ADDRESS	PHONE NUMBER AND EXTENSION
PERSON CALLED	OFFICE	PHONE NUMBER AND EXTENSION

OUTGOING CALL

PERSON CALLING	OFFICE	PHONE NUMBER AND EXTENSION
PERSON CALLED	ADDRESS	PHONE NUMBER AND EXTENSION

SUMMARY OF CONVERSATION

MSG SE: Elizabeth Kouloukharas 508-946-2714
 Dan Wilmore - 1/2 a month; 60-70 a year -
 (constant plan, powder, large, 16.91 pounds, demand noted)
 ATTORNEY, WASHINGTON

MSG DE: Jim Sprague - 617-~~935-2160~~ *112
 932-7600

Wester: Bob M^o Collier 413-784-1100 *214

Central: Phil Dadeau 508-792-7683 1 or 2 a year
 (*3728) for stabilizing an eroding bank.

* Note: Central would like a presentation by Corps on our program so their staff can have a better understanding of our program.

12-5-94

Grant:

TWS would like to screen these projects.

per Karen: they don't attend the highway
meetings to screen projects at that time -

so it must be coordinated through JP.

Monica



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION I
JOHN F. KENNEDY FEDERAL BUILDING
BOSTON, MASSACHUSETTS 02203-0001

December 2, 1994

William F. Lawless, P.E., Chief
Regulatory Division, Operations Directorate
U.S. Army Corps of Engineers
New England Division
424 Trapelo Road
Waltham, MA 02254-9149

RECEIVED
DEC 14 1994
REGULATORY DIVISION

RE: Revised Massachusetts PGP

Dear Mr. Lawless:

The U.S. Environmental Protection Agency (EPA) recently received a draft, revised Massachusetts Programmatic General Permit (MAPGP) from Monica Stillman of your staff. EPA believes that the MAPGP has worked extremely well over the past year, and we would like to reiterate our support for its reissuance. We believe that the PGP has improved the efficiency and effectiveness of the program as a whole by offering more protection to valuable aquatic resources, streamlining the permit review process, providing more certainty for applicants, and relying whenever possible on sound state decisions.

We have reviewed the specific changes in the MAPGP, and offer the following comments.

Clarification of "Spawning" Areas

The revised MAPGP clarifies Condition 19 such that "spawning areas" are defined as "fish spawning or nursery areas" to be avoided during spawning seasons, and states that "impacts to these areas shall be avoided or minimized to the maximum extent practicable during all times of the year" (emphasis added). EPA is concerned about two aspects of this condition: first, that the spawning areas are restricted to fish spawning; and second, that impacts to these areas can be permitted under the PGP during non-spawning seasons. We will address each of these points in turn.

Restriction to "fish" spawning

Prior to the Corps' clarification that spawning referred to fish spawning only, the PGP simply required that discharges into spawning areas be avoided. Since the common definition of spawning is the deposition of eggs or young by fish, mollusks, crustaceans, amphibians, or reptiles, Condition 19 appeared to prohibit discharges into waters (e.g., streams, oceans, lakes, wetlands, etc.) and vernal pools during breeding seasons of these animals. Given the drastic decline of many species of fish, shellfish, amphibians, and reptiles throughout New England, this interpretation of the Condition appeared reasonable; that is, since



Recycled/Recyclable
Printed with Soy/Canola Ink on paper that
contains at least 75% recycled fiber

the PGPs are supposed to permit only those projects that have minimal impacts to the aquatic ecosystem, discharges into spawning areas would likely not qualify as a minimal impact. We believe that discharges into all spawning areas should be screened by the resource agencies.

As you know, Massachusetts has a vernal pool certification program that offers protection to certified vernal pools. Specifically, once a vernal pool is certified, it is classified as an Outstanding Resource Water (ORW), and the state will generally not issue a Section 401 certification for a discharge into it. Despite this additional protection offered by the State, vernal pools are still at risk in Massachusetts for several reasons. First, there are a number of exemptions to the prohibition against discharges into ORWs, and the federal government therefore cannot rely on the State to protect all vernal pools.¹ Second, there are many pools which, although valuable, are not yet certified. Since uncertified vernal pools are not afforded any additional protection by the State, these uncertified pools should be protected by the Section 404 program. Third, many vernal pools are certifiable, but not protectable under the Massachusetts Wetlands Protection Act. In other words, smaller, isolated pools which do not meet the definition of Isolated Land Subject to Flooding (1/4 acre foot of standing water with an average depth of 6 inches) are not protectable under the State law. Finally, many vernal pools in Massachusetts are less than 5000 square feet in size, and may slip undetected through the non-reporting PGP absent a condition in the PGP prohibiting discharges into vernal pools.

Including vernal pools in the definition of spawning areas will not place an undue burden on PGP applicants or the Corps. Information necessary to document the existence of vernal pools does not have to be exhaustive. If small pools of standing water exist on the site (these can be seen either in the field or in leaf-off aerial photographs if the application is submitted during the dry season), and if there is evidence of amphibian breeding activity, it is likely that a vernal pool exists. If an opponent to the proposed project asserts that a vernal pool exists on the site, the Corps could require that scientific evidence supporting the existence of the vernal pool be clearly demonstrated.

Permitting impacts to spawning areas during non-breeding season
Regardless of what species are included within the definition of spawning areas, EPA believes that permanent impacts to spawning areas should be prohibited under the PGP at all times of the year.

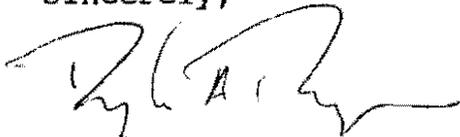
¹ For example, the following activities are exempt from the prohibition against discharging into a certified vernal pool: construction of a single family dwelling; the subdivision of an owner occupied lot into an additional lot; the construction of public highways and railroad tracks (and associated facilities); and all projects having received a variance under the Massachusetts Wetlands Protection regulations.

Since spawning areas of many species consist of specific substrates and/or specific sites, destruction or alteration of these spawning areas could have a detrimental impact on the population in the water or wetland in question. For example, some fish require shallow waters with small gravel for spawning. If these spawning areas are altered, they may not be adequate for spawning in subsequent breeding seasons.

In the case of vernal pools, many obligate vernal pool species are philopatric (i.e., return to their natal pools to breed each year). Avoiding impacts to the vernal pool during spawning may prevent the direct loss of adults, eggs, or juveniles; however, impacts to the pool at other times of the year may destroy the only breeding area available to the local population. Therefore, impacts to spawning areas at all times of the year may lead to more than minimal impacts.

Please contact Kyla Bennett of my staff at 565-4436 for further coordination on this matter.

Sincerely,



Douglas A. Thompson, Chief
Wetlands Protection Section

cc: M. Stillman, USACOE, Waltham, MA
T. Timmerman, USACOE, Waltham, MA
V. Lang, USFWS, Concord, NH
E. Reiner, WWP

TELEPHONE OR VERBAL CONVERSATION RECORD

Form 751 (Rev. 11-83) Use for recording telephone calls made by the proponent agency to The Assistant Secretary's Office.

Dec. 1, 1994

SUBJECT OF CONVERSATION

MA PGP - EPA

INCOMING CALL

PERSON CALLING Ed Reiner	ADDRESS EPA	PHONE NUMBER AND EXTENSION 617-565-
PERSON CALLED M. Stillman	OFFICE Reg B	PHONE NUMBER AND EXTENSION 78152

OUTGOING CALL

PERSON CALLING RA	OFFICE	PHONE NUMBER AND EXTENSION
PERSON CALLED	ADDRESS	PHONE NUMBER AND EXTENSION

SUMMARY OF CONVERSATION

- 1) Secondary impacts: can we include clearing that may not trigger Corps jurisdiction?
- 2) Bank stabilization - he will have to review the change.
Concerned with burden placed on Federal agencies by Cat II at JP. insufficient info means the agency must do a site visit. We would prefer ^{usually} Corps bring project to JP with sufficient info. We can also get info in different ways - not always a site visit.
He will consider. I will talk to Chris/Karen about info going to JP.
- 3) 10-day review time is work days or business days. Total of 4 full weeks. OK -
letter must clarify reason for concern but ~~must not be~~ doesn't have to be lengthy.
- 4) Kyla has a letter in review.

Monica

CENED-OD-R

DATE: November 17, 1994

MEMORANDUM FOR: Monica Stillman

SUBJECT: MA PGP, Cat I, Special Cond. #17 - Waterway Crossing

1. Per our recent discussion, I believe that the subject condition is unnecessarily restrictive on Mass. Highway Department bridge projects.
2. Typically, these projects involve the emplacement of one or more cofferdams, in order to isolate areas within the waterway for the construction of piers and abutments. The nature and extent of work on these bridges results in these cofferdams being in place for months, and in some instances, over several years.
3. The only turbidity caused within the waterway occurs at the time of either emplacement or removal of the cofferdam. For the intervening period, there may be a partial restriction of the waterway at the construction site, but there is no direct work in the waterway. Water extracted from these cofferdams is processed through appropriate retention/sediment control structures prior to reintroduction into the waterway or wetlands, as is other surface runoff from the construction site.
4. It appears that the subject condition was developed in order to allow agency screening of projects such as driveway crossings, utility line crossings, etc. These activities tend to be much more limited in scope than bridges, and also limited as to duration. Frequently, these crossings of small waterbodies can be accomplished in a day or less. Certainly, the time-of-year restriction imposed by the special condition is appropriate in these instances, and does not impose an unwarranted hardship. In order to limit the restriction imposed by the subject condition on MHD bridge projects, I suggest the following language be added to Special Condition #17:

For the purpose of this condition, "instream work" is defined as any activity occurring directly in the water, which causes or could cause suspension of stream sediments. It includes such activities as: excavation or backfilling of the streambed, driving sheet steel piling, emplacement and/or removal of sandbags, jersey barriers, or any other water diversion device. It does not include those periods during which a diversion device (cofferdam) is in place, and work is continuing in the dry.

5. I believe that the addition of this language would facilitate the efficient review of MHD bridge projects, which otherwise would all have to be subjected to screening under the MA PGP.

GRANT KELLY
Senior Project Manager

cc: Karen Kirk Adams

Do/Can FWS attend meetings? Can they handle at the meetings, Highway screening meetings were intended to be done w/ agencies.
EPA

OK w/...
KRP
11/15

FACSIMILE TRANSMITTAL HEADER SHEET

For use of this form, see AR 25-11, the proponent agency is ODISC4

COMMAND/ OFFICE		NAME/ OFFICE SYMBOL	OFFICE TELEPHONE NO. (AUTOVON/Comm.)			FAX NO. (AUTOVON/Comm.)
FROM:						
Monica Stillman		CENED-OD-R	617-647-8152			
TO:						
Jamie Fosburgh		National Park Service				617-223-5172
CLASSIFICATION	PRECEDENCE	NO. PAGES (Including this Header)	DATE-TIME	MONTH	YEAR	RELEASER'S SIGNATURE
		6	30	Nov	1994	

REMARKS

Space Below For Communications Center Use Only

DA FORM 3918-R, JUL 99

DA FORM 3918-R, AUG 72 IS OBSOLETE

USAPPC V2 10

Jamie Fosburgh -
Complete copy of PGP is in original copy
being mailed today. Relevant pages follow.

Thank you!

Monica Stillman

DRAFT

* Changes from
earlier draft.
[11-29-94]

Permit No.: 1993-01040

Effective Date: January 1, 1995

Expiration Date: December 31, 1999

Applicant: General Public in Massachusetts

DEPARTMENT OF THE ARMY PROGRAMMATIC GENERAL PERMIT
COMMONWEALTH OF MASSACHUSETTS

The New England Division of the U.S. Army Corps of Engineers hereby issues a programmatic general permit that expedites review of minimal impact work in coastal and inland waters and wetlands within the Commonwealth of Massachusetts. Activities with minimal impacts, as specified by the terms and conditions of this general permit, are either non-reporting (provided required local and state permits and required state certifications are received), or are to be screened by the Corps and federal resource agencies for applicability under the general permit. The Corps individual permit review process, and activities exempt from Corps jurisdiction, are not affected by this proposal.

Activities covered by this general permit include 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), as well as 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).

Procedures

A. State and Local Approvals

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

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

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

(c) For work in Corps jurisdiction involving a discharge to waters of the U.S., an individual 401 water quality certification (WQC) ¹ must be obtained from the Massachusetts DEP before work can proceed pursuant to this general permit for the following circumstances: **[This will be changed per 401]**

1. proposed work that is not subject to the WPA (310 CMR 10.00) but does require a 401 Water Quality Certification and proposes the loss of bordering vegetated wetlands, land under water, or federal non-state wetland (e.g., WPA exemptions);
2. any project intended to create a real estate subdivision for which a Notice of Intent is submitted on or after October 1, 1992;
3. Any project which will result in the loss of more than 5,000 square feet of bordering vegetated wetlands or land under water;

(1) See MGL c. 21 Sections 26 - 53 and regulations at 314 CMR 9.00, as supplemented by the Interim Guidance effective 10/1/92.

4. proposed work in Outstanding Resource Waters (ORWs) as designated in 314 CMR 4.00;
5. proposed work in coastal areas, which will result in the loss of any amount of salt marsh;
6. projects involving dredging more than 100 cubic yards in navigable waters.

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

B. Corps Authorization: Category I (Non-Reporting)

Work in Massachusetts that is subject to Corps jurisdiction², that meets the definition of Category I on the Definition of Categories sheet (attached), and that meets all of this permit's other conditions may proceed without application or notification to the Corps provided the required federal, state and local authorizations are obtained. Note that the review thresholds under Category I apply to single, complete projects only (see Condition 5). Also, note that Category I does not apply to activities occurring in a component of the National Wild and Scenic River System (see Condition 9 and page 9 for listed rivers in Massachusetts).

Work that is not subject to the Massachusetts Wetlands Protection Act (WPA), but is subject to Corps jurisdiction, is eligible for Corps authorization under this PGP; although an Order of Conditions is not required, the general permit review thresholds and requirements concerning WQC and CZM consistency apply. Such projects could include activities that are exempt from the WPA, and activities in federal wetlands (e.g., isolated wetlands), that are not covered under the WPA.

Although Category I projects are non-reporting, the Corps reserves the right to require review for an individual permit if there are concerns for the aquatic environment or any other factor of the public interest (see condition 4 on Discretionary Authority).

C. Corps Authorization: Category II (Screening)

For projects that do not meet the non-reporting thresholds applicants are required to submit an application to the Corps for a case-by-case determination of applicability under this general permit (Category II). Category II projects may not proceed until written notification is received from the Corps, and the applicable certifications or waivers concerning water quality and coastal zone management (CZM) are received by the applicant. Applicants will be notified by the Corps if an individual CZM consistency concurrence is required.

For Category II projects, applicants filing a notice of intent (NOI) with their local Conservation Commission should submit a copy of their NOI materials to the Corps at the same time they apply to their Commission, along with additional information concerning the work within Corps jurisdiction² (see below).

In addition, applicants shall submit a copy of their application materials to the Historic Preservation Officer at the Massachusetts Historical Commission (MHC) to be reviewed for the presence of historic/archaeological resources in the permit area that may be affected by

2) See Condition 2 concerning federal jurisdictional boundaries.

*
added
this
restriction

8. Endangered Species. No activity is authorized under this general permit which is likely to jeopardize the continued existence of 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 might be affected or is in the vicinity of the project and shall not begin work until notified by the district engineer that the requirements of the Endangered Species Act 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 (addresses and current Massachusetts list attached).

9. Wild and Scenic Rivers. No activity is authorized under this general permit that occurs in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a study river for possible inclusion in the system, while the river is in an official study status. Projects that have received approval of the National Park Service may be authorized under Category II of this general permit. Current rivers that this applies to in Massachusetts are listed on page 9. *Revised*

10. Federal Navigation Project. Any structure or work that extends closer to the horizontal limits of any Corps' navigation project than a distance of three times the project's authorized depth (see attached map for locations of these projects) shall be subject to removal at the owner's expense prior to any future Corps' dredging or the performance of periodic hydrographic surveys.

11. 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.

12. 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.

MINIMIZATION OF ENVIRONMENTAL IMPACTS:

13. Minimization. Discharges of dredged or fill material into waters of the United States shall be avoided and minimized to the maximum extent practicable.

14. Work in Wetlands. Heavy equipment working in wetlands shall be avoided if possible, and if required shall be placed on mats to minimize soil and vegetation disturbance.

15. Temporary Fill. Temporary fill in waters and wetlands authorized by this general permit (e.g. access roads, cofferdams) shall be properly stabilized during use to prevent erosion. Temporary fill in wetlands shall be placed on geotextile fabric laid on existing wetland grade. Temporary fills shall be disposed of at an upland site, suitably contained to prevent erosion and transport to a waterway or wetland. Temporary fill areas shall be restored to their original contours.



DEPARTMENT OF THE ARMY
NEW ENGLAND DIVISION, CORPS OF ENGINEERS
424 TRAPELO ROAD
WALTHAM, MASSACHUSETTS 02254-9149

REPLY TO
ATTENTION OF

November 30, 1994

Regulatory Division
CENED-OD-R-1993-01040

National Park Service
Attn: Jamie Fosburgh
15 State Street
Boston, Massachusetts 02109

Dear Mr. Fosburgh:

This is in reference to your comments on the Massachusetts Programmatic General Permit (PGP). We are currently finalizing revisions and hope to reissue the PGP for a 5-year period effective January 1, 1995. We would like to publish the PGP prior to that date, so your timely review of this information would be greatly appreciated. We currently anticipate issuing the revised PGP with a public notice in mid-December. We trust we can agree on final revisions to satisfy the requirements of the National Wild and Scenic Rivers Act. A copy of the current draft PGP is attached.

We would like to revise Condition 9 in accordance with your recommendation, with one added provision. The PGP would not apply to projects in designated segments of National Wild and Scenic Rivers, or in designated study segments, unless approved by the National Park Service. This would allow us to process applications under the PGP in cases where the National Park Service had already reviewed and approved the project. The text of Condition 9, and the procedures section, have been revised to reflect this. It will be necessary to have surveyed boundary maps for the appropriate rivers in Massachusetts, for our use in determining when this condition applies.

We are reluctant to include special review procedures for activities outside National Wild and Scenic River segment boundaries and study segment boundaries, such as activities up- or down-stream, or in tributaries of designated river segments. The list of Category I activities has been established based on the criteria that impacts are likely to be minimal, in conjunction with the standard conditions of the PGP.

Category II activities are screened to insure impacts will be minimal. Accordingly, we would be willing to provide the National Park Service the opportunity to comment on projects screened under Category II of the PGP. This coordination would provide the National Park Service the opportunity to comment, and recommend any special conditions deemed necessary to minimize adverse effects. Coordination could be accomplished in whatever way is

most convenient for your staff; we can mail or fax copies of all Category II information to your office, or a member of your staff could attend our Joint Processing meetings where we review Category II projects with the Federal resource agencies (meetings held here at the New England Division every 3 weeks). We propose the same review period for the National Park Service for this coordination that the Federal resource agencies have, which is ten working days to provide comments or concerns.

Surveyed maps of the tributary segments, up-stream, and down-stream river segments would be helpful for our staff, so that we are not sending information on all Category II projects. However, if such maps are not available, or the National Park Service would like to comment on projects over a broader area, we would be willing to coordinate on all Category II projects. If that is the case, we would prefer to have a staff member attend our Joint Processing meetings, so that we are not routinely held up for 10 working days on Category II projects that may not be in areas of concern to the National Park Service.

Please let us know if these revisions are acceptable, and if so, which coordination procedures should be incorporated into our review process for Category II projects. If the revisions are not acceptable, I recommend that we arrange a meeting as soon as possible to try to reach a mutually agreeable solution. If you have any questions, or would like to arrange a meeting, please contact Monica Stillman at (617) 647-8152.

Sincerely,

Christine Godfrey
Chief, Policy Analysis Branch
Regulatory Division

mjs
PM

Cox
BRCH

Enclosure

11-29-94
Draft PGP
attached.

cc:Mail for: Timothy L Timmermann

Subject: MA PGP info

From: MONICA J STILLMAN 11/29/94 3:20 PM

To: Mailing List: #PERMITS BRANCH A

I need a relatively quick response to the following questions. Please add any comments and return the message. Thanks for your help!

(a) I need info on cases we have kicked out of Cat. I or Cat. II because of vernal pools. How were cases resolved?

(b) How many cases are getting kicked out at JP for - more information ... or end up requiring IP... ?

(c) How often is Fish and Wildlife Service providing t.o.y. restrictions on in-stream work, or site-specific concerns on wildlife habitat? How often are they doing a "kick-out" in order to conduct a site visit to get that information?

Thanks! Monica

(A) File # 94-01492 kicked to IP level ~~for~~ vernal pool direct + possible secondary impacts. Project not resolved but they may try to design project so no fill placed in area functioning "ecologically" as the vernal pool. They have been told by DEP that they will probably not set WAC for placement of fill in this ORW.

(B) Typically only 10-20% get kicked out of their actual category for IP review. For me these are 404 fill projects that show poor planning or consideration of alternatives (then the threat of IP usually leaves us w/ Category II redesign project) or Pier projects that will end up w/ pier/float boats over eelgrass area. I try to



only bring projects to JF if all the info. I think agencies will ~~not~~ need to make a decision.

(c) TOY restrictions are being used appropriately on my projects. I couldn't guess a percentage. I don't have too many actually very few projects where projects are kicked out for the FWS to do a site visit. They usually can work with the info I provide from my site visit. The normal rule case + other complicated Cat II projects are clearly the exception to the rule.

- TIM 12/5/94



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION I
JOHN F. KENNEDY FEDERAL BUILDING
BOSTON, MASSACHUSETTS 02203-0001

August 22, 1995

Mr. James C. Wong
Acting District Engineer
New England Division
U.S. Army Corps of Engineers
424 Trapelo Road
Waltham, Massachusetts 02154

Dear Mr. Wong:

This letter is in response to your asking that EPA issue Section 401 water quality certification for tribal lands subject to the Massachusetts and Maine Programmatic General Permits. As you may know, EPA never received your original letter dated February 21, 1995. A copy of the letter was resent to EPA on June 16, 1995.

Section 401(a) of the Clean Water Act states in part that in any case where a state or interstate agency has no authority to give a water quality certification, that such certification shall be from EPA. At this time none of the New England Tribes has approved water quality standards or 401 authority for the purposes of regulating water resources within the borders of an Indian reservation pursuant to section 518(e) of the Act.

Both state PGPs had extensive state and Federal agency and public reviews dating back several years.

As provided for under section 401(a)(1) of the Clean Water Act, EPA is certifying both PGPs will comply with applicable water quality standards to the extent that Massachusetts or Maine have no authority to give such a certification for waters within a reservation.

If you have any questions please contact Ralph Abele of my staff at (617) 565-4438.

Sincerely,

A handwritten signature in black ink, appearing to read "Ronald G. Manfredonia".

Ronald G. Manfredonia, Chief
Water Quality Branch



Recycled/Recyclable
Printed with Soy/Canola Ink on paper that
contains at least 75% recycled fiber

cc:Mail for: Monica J Stillman

Subject: Re: MA PGP info
From: JOANNE R POLCI 11/30/94 10:00 AM
To: MONICA J STILLMAN

Monica,
I can only answer question b: I do get a lot kicked out for additional information, many times the concern is that floats are or may be resting on the bottom, eel grass is a big concern, as well as requests to move structures more to the east or west, make them shorter or longer, that kind of concern.

Thanks
Joanne P.

cc:Mail for: Monica J Stillman

Subject: Re: MA PGP info
From: THOMAS C BRUHA 11/30/94 8:59 AM
To: MONICA J STILLMAN

- a) non
- b) many because of eel grass (NMFS): if beach nourishment.. because of compatibility and if fill (revetment etc.) because of inter-tidal impacts.
- c) they never get to jp if there is any question they go directly to IP.

Subject: MA PGP info
From: MONICA J STILLMAN
Date: 11/29/94 3:20 PM

I need a relatively quick response to the following questions. Please add any comments and return the message. Thanks for your help!

- (a) I need info on cases we have kicked out of Cat. I or Cat. II because of vernal pools. How were cases resolved?
- (b) How many cases are getting kicked out at JP for - more information ... or end up requiring IP... ?
- (c) How often is Fish and Wildlife Service providing t.o.y. restrictions on in-stream work, or site-specific concerns on wildlife habitat? How often are they doing a "kick-out" in order to conduct a site visit to get that information?

Thanks! Monica

TELEPHONE OR VERBAL CONVERSATION RECORD

11-29-94

See also the form AR 340 if the predominant agency is The Adjutant General's Office

SUBJECT OF CONVERSATION

MA PGP - NMFS concerns

INCOMING CALL

PERSON CALLING	ADDRESS	PHONE NUMBER AND EXTENSION
PERSON CALLED	OFFICE	PHONE NUMBER AND EXTENSION

OUTGOING CALL

PERSON CALLING	OFFICE	PHONE NUMBER AND EXTENSION
M. Stillman	Reg	
PERSON CALLED	ADDRESS	PHONE NUMBER AND EXTENSION
Jon Kurland	NMFS Gloucester	508-281-9204

SUMMARY OF CONVERSATION

- (1) Endangered sp. act: "may affect" has stricter consultation standards from the Act - formal consultation required. Not minimal-impact. "No effect" could revert to GP but "may affect" should be IP. NMFS can indicate if species is present at IP. Staff can fairly quickly provide Corps w/ info if next step is required → No effect or may affect. In Condition; remove "might be affected" wording regarding applicant's need to notify Corps.
- (2) Moorings in intertidal zone: fairly prevalent problem. Adding as a prohibition will discourage. Add "... and vessel will not rest on substrate at low tide." This is more restrictive than DWPs. Probably more effective in PGP itself than dealing with individual harbor masters. add "and not in eelgrass vegetation". Corps opposes this. It would have the same deterrent effect but → much more difficult for the Corps to monitor. We are called to review Cat 1 projects on a regular basis, particularly as they get more prohibitive.
- (3) Structures/eelgrass within 50': NMFS concern is cases where a pier is put in a narrow break in the eelgrass. People use that as a "loophole" to put a structure in an area with eelgrass. We have to justify in terms of secondary effects. NMFS can pull together a presentation for us based on their observations.

TELEPHONE OR VERBAL CONVERSATION RECORD

For use of this form, see AR 240 (3). The procuring agency is The Adjutant General's Office.

11-29-94

SUBJECT OF CONVERSATION

DMFS continued.

INCOMING CALL

PERSON CALLING	ADDRESS	PHONE NUMBER AND EXTENSION
PERSON CALLED	OFFICE	PHONE NUMBER AND EXTENSION

OUTGOING CALL

PERSON CALLING	OFFICE	PHONE NUMBER AND EXTENSION
PERSON CALLED	ADDRESS	PHONE NUMBER AND EXTENSION

SUMMARY OF CONVERSATION

Condition 19 - add shellfish
 Condition 14 - add that disturbed areas shall be restored. Initially recommended broadening to cover S.A.S. because of mudflat concerns. Any tidal work: Cat. II - we can handle w/ project-specific conditions. Don't want to make it seem mats in intertidal zone are ok or are Cat. I work. Agreed.

Additional info required: may need shellfish surveys for dredging
 Procedures over Cat II: confusion about options. I clarified they are so applicant has some idea of what to expect.

Category Sheets -
 Structures: Can we require floats to be some min. height above substrate eg in 2' MLW. Stops may be only several inches off the substrate. This would take care of boats resting on the substrate too.

Eelgrass: small projects can have substantial impacts.
 Mudflats: floats, boats resting on the mud can have substantial scouring effects in finer-grained substrates.

cc:Mail for: Monica J Stillman

Subject: Re: MA PGP info

From: KAREN K ADAMS 11/29/94 2:50 PM

To: MONICA J STILLMAN

I need a relatively quick response to the following questions. Please add any comments and return the message. Thanks for your help!

(a) I need info on cases we have kicked out of Cat. I or Cat. II because of vernal pools. How were cases resolved? Tim has one pending, Laurie has one possible kickout.

(b) How many cases are getting kicked out at JP for - more information ... or end up requiring IP... ?Rough estimate is 50% are ok'd at JP. Most of the rest need additional info. Very few recently have gone right to IP.

(c) How often is Fish and Wildlife Service providing t.o.y. restrictions on in-stream work, or site-specific concerns on wildlife habitat? How often are they doing a "kick-out" in order to conduct a site visit to get that information? i don't recall any project specific TOY. They usually want our PM to look at the site and provide photos, occasionally will go to a site themselves. Usually only when all the agencies are going. They generally want info to assure impacts have been minimized and that mitigation proposed isn' creating greater impacts.

Thanks! Monica



DEPARTMENT OF THE ARMY
NEW ENGLAND DIVISION, CORPS OF ENGINEERS
424 TRAPELO ROAD
WALTHAM, MASSACHUSETTS 02254-9149

REPLY TO
ATTENTION OF

November 29, 1994

Regulatory Division
CENED-OD-R-1993-01040

Massachusetts Aeronautics Commission
Attn: Armand J. Dufresne
10 Park Plaza Room 6620
Boston, Massachusetts 02116-3966

Dear Mr. Dufresne:

This is in response to your request concerning the status of airport tree clearing limited projects in the Massachusetts Programmatic General Permit (PGP). Our evaluation of your request is based on our review of your recommendations, the Generic Environmental Impact Report (GEIR) for Vegetation Removal in Wetlands at Public Use Airports, and the limited project requirements.

The Corps, the Federal resource agencies (Environmental Protection Agency, U.S. Fish and Wildlife Service, and National Marine Fisheries Service), and the Massachusetts Department of Environmental Protection, are opposed to creating special review thresholds for specific types of activities in the PGP. Review thresholds based on impacts, rather than specific activities, insure simplicity and fairness in the PGP. The following evaluation outlines why we do not believe it is appropriate to establish special review thresholds for airport tree clearing limited projects in the PGP at this time.

While the decision-making process outlined in the GEIR is intended to insure impacts are minimized, we do not have sufficient information to insure that impacts will normally be minimal. As defined in our regulations at 33 CFR 322.2 (f), the standard for general permits must be minimal impacts. The potential wetland acreages to be affected are substantial for many airports. While the GEIR indicates that these acreages are conservative, we would argue that they may be underestimates due to the source maps (e.g., NWI and SCS soil maps are routinely found to underestimate total wetland acreage when compared to site-specific information). Potential impacts can only be assessed with site-specific information on the wetland systems to be impacted. The information provided in the GEIR does not indicate that impacts to substantial areas of wetlands would normally be minimal.

While the GEIR provides a list of wetland functions and values to be evaluated for each impact area, the actual functional assessment for each project should be site specific, and is a

subjective evaluation based on professional judgement. Because the Corps has not adopted a quantitative method to document this information, we most certainly would prefer to be involved in assessments for impact areas typical of the acreages involved at many of the airports in Massachusetts.

The GEIR includes information on potential mitigation measures for unavoidable impacts. The fact that mitigation may be required for lost functions and values underscores our belief that impacts from these projects will not always be minimal. The evaluation of suitable mitigation generally, although not exclusively, occurs within the context of the individual permit review process. We rely on input from a variety of sources in making the determination of whether mitigation is appropriate, and if so, how much and what type of mitigation is suitable. We rely on comments received in response to public notices in this process and see no reason to eliminate this component of our normal review procedures for airport tree clearing projects which may require mitigation.

As an alternative, to insure the most efficient use of the GEIR and the Corps regulatory process, we encourage the Massachusetts Aeronautics Commission to develop vegetation management plans for all airports that will need clearing and future maintenance. Based on the individual permit review process, we would be willing to issue permits for a longer duration than the typical permit duration of 5 years. We would be willing to issue longer-term approvals based on long-term management plans, which would likely have some minimal reporting requirements to inform us of the necessary maintenance activities on a specified basis (e.g., annually). The GEIR provides useful information for the Corps project managers, and useful guidelines for designing plans for specific sites.

Additionally, projects with impacts less than 1 acre can continue to be screened under Category II of the PGP. This applies to single, complete projects, which could be applied to a single runway clearing project, if other substantial clearing activities were not reasonably foreseeable.

If you have new information that would support a conclusion that airport tree clearing projects will normally have minimal impacts, we would be willing to review that information. A decision to create special review thresholds in the PGP would have to be agreed to by the Corps, Federal resource agencies, and the Massachusetts DEP. While we do not believe such a decision could be made prior to reissuance of the PGP for January 1, 1995, it could be included at a later time as an amendment if agreed to by all parties.

However, I would like to restate that the Massachusetts PGP has been developed with an emphasis on impact-based thresholds, rather than activity-based thresholds, and that it is likely to be difficult to justify any change to the 1-acre threshold.

Therefore, we strongly encourage you to develop long-term management plans for the airports in Massachusetts that need clearing, and to coordinate with the Corps early in the planning process.

If you have any questions on this information, please contact me or Monica Stillman of my staff at (617) 647-8335. To discuss permit applications, or to set up a pre-application meeting, please contact Karen Adams.

Sincerely,

mjs
pm

Christine Godfrey
Chief, Policy Analysis Branch
Regulatory Division

CJ
BRCH

November 18, 1994

MEMORANDUM TO FILE: 1993-01040 Massachusetts PGP
SUBJECT: Cape Cod Bay Disposal Site
FROM: Monica Stillman

CCBDS
info

1. I met with Bill Lawless to review the request to include dredging projects with disposal at the Cape Cod Bay Disposal Site under Category II of the PGP.

2. The Federal resource agencies are opposed to the revision. National Marine Fisheries Service believes that dredging projects with open-water disposal are inherently more complicated and complex than other projects, and a general permit is not appropriate. They stated that because there are likely to be delays related to testing the dredged material, it is not burdensome to issue a public notice for these projects.

The U.S. Fish and Wildlife Service is opposed to including open-water disposal in the PGP because it sends the message that these projects are minimal-impact, and de-emphasizes the need to fully evaluate alternatives to open-water disposal.

I have not reached EPA by phone to discuss this recommendation. However, EPA opposed an earlier recommendation to include disposal at MBDS in the PGP, and is likely to oppose this recommendation as well. They believe it is important to keep the public involvement in place for open-water disposal projects.

3. The only responses to the public notice listing proposed changes to the MA PGP were in objection to inclusion of disposal at the MBDS in the PGP. Comments received from the Conservation Law Foundation, Save the Harbor Save the Bay, and the Coastal Advocacy Network would likely apply to inclusion of the CCBDS as well. They objected to classification of open-water disposal as "minimal impact work"; they objected to loss of public input in the Corps review procedure; and they expressed concerns with what is determined to be clean and suitable.

4. The CCBDS Management Plan makes no changes to the existing regulatory framework governing open-water disposal projects, with the exception that a marine mammal observer will be on board every disposal trip. Determinations of suitable, clean material do not change. The management plan is predominantly a monitoring plan, specifying parameters to be monitored with use of the site, and designating a committee to review the information.

It is likely that by the end of the first 5-year period of the PGP (to expire December 31, 1999), the monitoring results will provide useful information about the impacts associated with use of the site. It may be appropriate to review the monitoring information and evaluate the appropriateness of including the CCBDS in the PGP at that time. No change will be made at this time.

1993-01040 Massachusetts Programmatic General Permit
CAPE COD BAY DISPOSAL SITE

1. The Commonwealth of Massachusetts certified a FGEIR (October, 1990) for disposal of dredged material at the Cape Cod Bay Disposal site. Certification of the FGEIR by the Secretary of the Executive Office of Environmental Affairs included the requirement to develop a management plan for use of the designated site. The FGEIR, and management plan specifying disposal monitoring requirements, mean that the projects may now receive state approval for disposal at CCBDS.

2. The management plan consists of the following:

- pre-disposal survey to document existing conditions
- placement of a marker buoy at the site
- time-of-year restriction to avoid adverse impacts to marine mammals (no disposal Dec. - May 15)
- establishment of a Disposal and Monitoring Committee (state and federal agencies)
- post-disposal monitoring requirements (annually for first 2 years of use and every 5 years after that if no adverse impacts)

3. The only regulatory change incorporated in the management plan is the requirement that a marine mammal observer accompany every disposal trip. Disposal site will change if marine mammals are observed at the site.

4. MA DEM is responsible for management of the site at the state level, e.g., collecting all information on disposal (permits, type of material, sediment test results).

5.. The Management Committee will meet periodically to review all information on disposals that have occurred, and survey findings, and will make recommendations to the Secretary, as needed, regarding changes to the Management Plan.

6. There is no change in existing regulations, permit review and requirements, and testing/information to determine suitability. An ENF for use of the site will be filed with MEPA every three years.

7. Monitoring includes: water and sediment quality, benthic community, bioaccumulation of contaminants, and bathymetry. Monitoring is to insure material is not dispersing from the site, is not adversely impacting water quality and the benthic community.

TELEPHONE OR VERBAL CONVERSATION RECORD

For use of this form see AR 340-15. The procuring agency is The Adjutant General's Office

Nov. 7, 1944

SUBJECT OF CONVERSATION

MA PGP FWS

INCOMING CALL

PERSON CALLING	ADDRESS	PHONE NUMBER AND EXTENSION
Vern Lang	FWS - NH	603-225-1411

PERSON CALLED	OFFICE	PHONE NUMBER AND EXTENSION
M. Stillman	Reg	78152

OUTGOING CALL

PERSON CALLING	OFFICE	PHONE NUMBER AND EXTENSION

PERSON CALLED	ADDRESS	PHONE NUMBER AND EXTENSION

SUMMARY OF CONVERSATION

- * 1. Condition on fish spawning should be left in - the t.o.y. restrictions specified in PGP don't cover all construction activities.
- 2. CWA doesn't specify more protection for any 1 species. He will send wording FWS papers regarding protection of nursery, breeding, nesting, etc. areas for wildlife.
→ Corps feels that is too broad - it would near virtually every wetland.
- 3. Condition 2d: add that we can request "as-built's" of any construction project.
- 4. Dep. of Categories sheets: F71 5000 SF - 1 acre: Replace "NO t.o.y." with "t.o.y. to be determined case-by-case"
- * 5. Basic stabilization: all in Cat. II regardless of size. Dwarf wedge mussel in Mill R. and Ct. R. tributaries. The Brook Floater mussel may be listed soon as well - this would bring in more areas of concern in New England. What would be work load implications? Do we have #'s? Can DEP get #'s? These mussels inhabit river banks in sandy substrate. They are very susceptible to bank alterations.

FAX TRANSMITTAL SHEET
U.S. FISH AND WILDLIFE SERVICE
22 BRIDGE STREET, UNIT #1
CONCORD, NEW HAMPSHIRE 03301-4986



TO: Monica Stillman

FROM: V. Long, NEW ENGLAND FIELD OFFICE

DATE: 11/7/94

SUBJECT: MA PGP

NUMBER OF PAGES TO FOLLOW: 0

ADDITIONAL COMMENTS, IF ANY: language for #19 replacement

Insert under National Concerns: Discharges and other activities shall maintain and protect all existing and designated uses of the waterbody including, but not limited to, spawning, nursery, hibernacula, nesting, migration and other critical life cycle functions of ^{fish,} aquatic life and other wildlife.



PROBLEMS IN TRANSMITTAL, CALL 603-225-1411
OUR FAX NUMBER IS 603-225-1467



TELEPHONE OR VERBAL CONVERSATION RECORD

For use of this form see AR 340-15. The procuring agency is The Adjutant General's Office.

Nov. 2, 1994

SUBJECT OF CONVERSATION

EPA - CCBOS

INCOMING CALL

PERSON CALLING

ADDRESS

PHONE NUMBER AND EXTENSION

PERSON CALLED

OFFICE

PHONE NUMBER AND EXTENSION

OUTGOING CALL

PERSON CALLING

OFFICE

PHONE NUMBER AND EXTENSION

PERSON CALLED

ADDRESS

PHONE NUMBER AND EXTENSION

565-4422

SUMMARY OF CONVERSATION

Doug Thompson is out all week.
Dale Worey is out this pm, in Thursday.

TELEPHONE OR VERBAL CONVERSATION RECORD

For use of this form, see AR 310-15, the proponent agency is The Adjutant General's Office

Nov. 2, 1994

SUBJECT OF CONVERSATION

NMFS - CCBDS

INCOMING CALL

PERSON CALLING	ADDRESS	PHONE NUMBER AND EXTENSION
PERSON CALLED	OFFICE	PHONE NUMBER AND EXTENSION

OUTGOING CALL

PERSON CALLING	OFFICE	PHONE NUMBER AND EXTENSION
M. Stillman	Reg	78152
PERSON CALLED	ADDRESS	PHONE NUMBER AND EXTENSION
Jon Kenland	 NMFS	508-281-9300

SUMMARY OF CONVERSATION

Could be a problem -

disagreements over suitability, getting test data, etc. for existing projects. Still a concern with contaminant disposal. These are complex projects. GP not really appropriate. Sec. 7 - general consultation would be very helpful for the site.

TELEPHONE OR VERBAL CONVERSATION RECORD

For use of this form, see AR 140-13. The proponent agency is The Adjutant General's Office.

Nov. 2 1994

SUBJECT OF CONVERSATION

FWS- CCBDS

INCOMING CALL

PERSON CALLING	ADDRESS	PHONE NUMBER AND EXTENSION
PERSON CALLED	OFFICE	PHONE NUMBER AND EXTENSION

OUTGOING CALL

PERSON CALLING	OFFICE	PHONE NUMBER AND EXTENSION
M Stillman	Reg	78152
PERSON CALLED	ADDRESS	PHONE NUMBER AND EXTENSION
Jean Long	FWS Concord NH	603 225 1411

SUMMARY OF CONVERSATION

He doesn't see CCBDS any differently than MBDS.
Sec. 404 should be stricter than ocean dumping.

EPA inland testing manual -
- hints at change in 404 b1 guidelines to make
open water disposal "easier" per regulations, in sec.
404 waters.

*SECT. A - Copy
10/94*

DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
DIVISION OF RESOURCE CONSERVATION
BUREAU OF ENGINEERING

OFFICE OF WATERWAYS

SECTION 61 FINDING

DESIGNATION OF
CAPE COD DISPOSAL SITE
AND ESTABLISHMENT OF A
MANAGEMENT AND MONITORING PLAN

EOEA # 3692 - GEIR

MARCH 31, 1993

Prepared By:
Leslie R. Lewis, Administrator
Rivers and Harbors Program

PETER C. WEBBER
COMMISSIONER

EUGENE F. CAVANAUGH
DIRECTOR OF WATERWAYS

DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
100 CAMBRIDGE STREET, 19TH FLOOR
BOSTON, MASSACHUSETTS 02202
(617) 727-3160

MAY 1993

CAPE COD DISPOSAL SITE
MANAGEMENT AND MONITORING PLAN

TABLE OF CONTENTS

1.	<u>BACKGROUND</u>	1
1.1.	Report Organization	2
1.2.	Management and Monitoring Plan Objectives	2
2.	<u>DESCRIPTION OF CAPE COD DISPOSAL SITE</u>	4
2.1.	Site Location and Boundary Description	4
2.1.1.	Cape Cod Disposal Site	4
2.1.2.	Reference Site	4
2.2.	CCDS Physical Characteristics	4
2.2.1.	Physical Oceanography	4
2.2.1.a.	CCDS Bathymetry and Bottom Morphology	4
2.2.1.b.	CCDS Wave-Induced and Tidal Currents	6
2.2.1.c.	CCDS Hydrography	7
2.2.2.	CCDS Sediment Characteristics	7
2.2.2.a.	Sediment Grain Size Analysis and Distribution	7
2.2.2.b.	Sediment Trace Element Concentrations	8
2.3.	CCDS Biological Characteristics	9
2.3.1.	Benthic Biology Census Data	9
2.3.2.	Endangered Species	9
3.	<u>CCDS MANAGEMENT PLAN</u>	13
3.1.	Management Plan Objectives	13
3.2.	CCDS Management Plan	13
3.2.1.	Disposal and Monitoring Advisory Committee	14
3.2.2.	Pre-Disposal Dredged Material Analysis Records	16
3.2.3.	Dredged materials Transportation and Release	19
3.2.4.	Inspection and Observer Requirements	19
3.2.5.	Disposal Site Marking	21
3.2.6.	Data Management and Reporting	21
4.	<u>MONITORING PLAN</u>	23
4.1.	Pre-Disposal Investigations	23
4.1.1.	Pre-Disposal Bathymetric Survey	23
4.1.2.	Pre-Disposal Sediment Profilew Camera Survey	24
4.1.3.	Sediment Chemistry Survey	25
4.1.4.	Determination of Disposal Site Capacity	25
4.1.5.	Pre-Disposal Survey Reporting	25

4.1.5.a. Report Review Process	26
4.2. Disposal Monitoring	26
4.2.1. Inspector/Observer Requirement	27
4.3. Post-Disposal Monitoring	27
4.3.1. First Year Monitoring	28
4.3.2. Second Year Monitoring	29
4.3.3. Preparation of Environmental Notification Form	30
4.3.4. Fifth Year Monitoring	30
4.3.5. Five Year Monitoring Program	30
4.3.6. CCDS Closure	31
 BIBLIOGRAPHY	 32
 APPENDIX A. FORMS	 33

LIST OF FIGURES

1. Cape Cod Disposal Site and Reference Site Locations Within Cape Cod Bay	5
2. Taut-Wire Marker Buoy Specifications and Configuration	22

LIST OF TABLES

1. Comparison of Average Trace Element Concentrations, CCDS	9
2. Percentages and Rankings of Most Abundant Benthic Species at Cape Cods Disposal Site	11
3. Finfish and Shellfish Found at CCDS, by Time of Year, Ranked According to Number Occurring in Catch, 1981	12
4. Target Constituents to Measure in Sediments, Water and Tissues	17

DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
DIVISION OF RESOURCE CONSERVATION
OFFICE OF WATERWAYS

CAPE COD DISPOSAL SITE
MANAGEMENT AND MONITORING PLAN

1. BACKGROUND

This Management and Monitoring Plan (M/MP) has been developed in response to the requirement for a Section 61 Finding stated in the Certificate from the Secretary of the Executive Office of Environmental Affairs (EOEA) on the Final Generic Environmental Impact Report (FGEIR) for designation of a site in Cape Cod Bay for the disposal of dredged material from harbors in the Cape Cod region. In the FGEIR, completed in October, 1990, four sites in Cape Cod Bay were evaluated in accordance with criteria established by EOEA's Office of Coastal Zone Management (CZM), to determine the most suitable location for dredged materials disposal with the least probable impact on the bay's water quality and benthic ecosystem.

The site evaluations included a full suite of oceanographic, chemical, and marine biological investigations performed by Battelle Memorial Institute, Duxbury Operations, under contract to the Department of Environmental Management, Division of Waterways (now Office of Waterways). The FGEIR selected Site B for potential use for disposal of dredged materials, with Site C to be used as a reference site for comparative evaluations of the effects of disposal on sediment and water quality, and marine ecosystems in Cape Cod Bay. Both sites lie in eastern Cape Cod Bay, with Site B (also known as the Wellfleet Site) lying between 7 and 8 kilometers northwest of Wellfleet Harbor. Site B of the FGEIR will hereafter be referred to as the Cape Cod Disposal Site (CCDS).

The agency to be responsible for management of the site is DEM's Office of Waterways, which has been directed to develop a management and monitoring plan to satisfy the Section 61 Finding requirement of the Secretary's Certificate on the FGEIR. The purpose of the plan is to provide for the management and monitoring of dredged materials disposal operations at the site, including characterization of existing conditions prior to any use of the site. The Office of Waterways has been assisted in this effort by a technical panel formulated by CZM, to provide necessary input into the development of management options and organization, disposal project selection criteria, and the development of pre-, during and post-disposal monitoring plans.

The management plan includes periodic reporting to the

Secretary of EOE A on the condition of the CCDS, and the effects of dredged material disposal on the benthic community, as determined by periodic monitoring studies. An Environmental Notification Form (ENF) will also be prepared every three years as required by MEPA regulations, and will follow the normal MEPA process with regard to agency and public review and comment.

1.1. Report Organization

The sections that follow provide a description of the site and its existing conditions as determined by the investigations performed pursuant the FGEIR. Addressed in subsequent sections are recommendations for managing the site and monitoring disposal activities, including a plan for periodic evaluations to determine the effect of disposal activities on the benthic ecosystem of eastern Cape Cod Bay. As an essential part of site management, investigations to characterize baseline conditions at the CCDS are outlined; these investigations will be performed prior to use of the CCDS for dredged materials disposal. The purpose of these studies is to provide a basis for future comparisons with respect to possible changes in site sediments and water quality, to evaluate the rate of re-colonization by benthic organisms, and to determine the effects of dredged material disposal on the marine environment of eastern Cape Cod Bay..

1.2. Management and Monitoring Plan Objectives

The principal objective of the Management and Monitoring Plan (M/MP) is to provide for oversight of the disposal of clean materials from regional dredging activities at a site within an economical distance from harbors around Cape Cod Bay, while protecting the existing marine ecosystem from potentially adverse impacts. The M/MP provides a framework for tracking which dredged materials have been disposed of at the CCDS, and indicates means for retaining a record of disposal activities and the quality of dredged material deposited at the site. It also outlines a monitoring program designed to determine the fate of disposed dredged materials and their effect on sediment, water quality and the benthic community in the vicinity of the CCDS. The following objectives are addressed in formulation of the M/MP:

- Provide a general plan and criteria for disposal project selection to meet the requirements of a Section 61 Finding of avoiding or minimizing adverse environmental impacts.
- Recommendation of a mechanism for periodic review and update of the plan in response to new information.
- Recommendation of a suite of marine studies to more fully establish baseline conditions at the CCDS just prior to any

disposal of dredged materials.

- Establishment of a plan for site management and disposal operations monitoring that includes means for preventing any adverse impact to marine mammals and endangered species that may be in the site environs at the time of disposal operations.
- Establishment of a plan for monitoring sediment and water quality at the CCDS, and maintaining a viable habitat for marine species in eastern Cape Cod Bay.
- Recommendation of a plan for periodic monitoring activities and data analysis to determine the effectiveness of management option implementation.
- Recommendation of a means to provide continuity in CCDS management and monitoring, including practical methods for data management, storage, and retrieval for future evaluations of site conditions, changes and the development of revised management options.

2. DESCRIPTION OF CAPE COD DISPOSAL SITE

2.1. Site Location and Boundary Designation

2.1.1. Cape Cod Disposal Site

The Cape Cod Disposal Site (CCDS), identified as Site B in the FGEIR, is a 1 square mile area centered on 41°54.4'N Latitude and 70°13.3'W Longitude, approximately 13.7 kilometers west-northwest by west of the entrance to Wellfleet Harbor on Cape Cod. The area is a square with each side one mile in length. The site is within the east-central portion of Cape Cod Bay roughly equidistant between Billingsgate Shoal to the southeast (approximately 7.3 km.) and Fishing Ledge to the northwest (approximately 7.2 km.). Water depth at the site averages about 31 meters (101.7 feet). The map in Figure 1. shows the location of both the CCDS and the Reference Site within Cape Cod Bay.

Within the area of the CCDS, at Station B-1 of the FGEIR, historical disposal of about 227,500 cubic yards of dredged material has taken place at what was previously known as the Wellfleet Site. At that location, 68,000 cubic yards of dredged materials were disposed of in 1971, and a further 70,000 cubic yards in 1981, derived from dredging and maintenance of the Federal navigation project at Wellfleet Harbor. A further 89,500 cubic yards of material was deposited at the site in 1983, resulting from Commonwealth dredging of a channel and mooring area at the Wellfleet Town Pier.

2.1.2. Reference Site

The Reference Site being proposed for this plan is that identified in the FGEIR as Site C, which is located about 6.8 kilometers north-northwest from the CCDS (Site B), with its central point at 41°57.5'N Latitude and 70°16.0'W Longitude. It has an area similar to the CCDS, of 1 square mile centered on the above location. Water depth at the Reference Site averages about 39 meters (128 feet).

2.2. CCDS Physical Characteristics

2.2.1. Physical Oceanography

2.2.1.a. CCDS Bathymetry and Bottom Morphology

As stated above, water depth at the CCDS averages 31 meters. The seafloor at the CCDS is covered with 4 to 8 meters of recent sediments, a significant proportion of which are deep water marine muds. This appears to be underlain by glacial drift deposits left

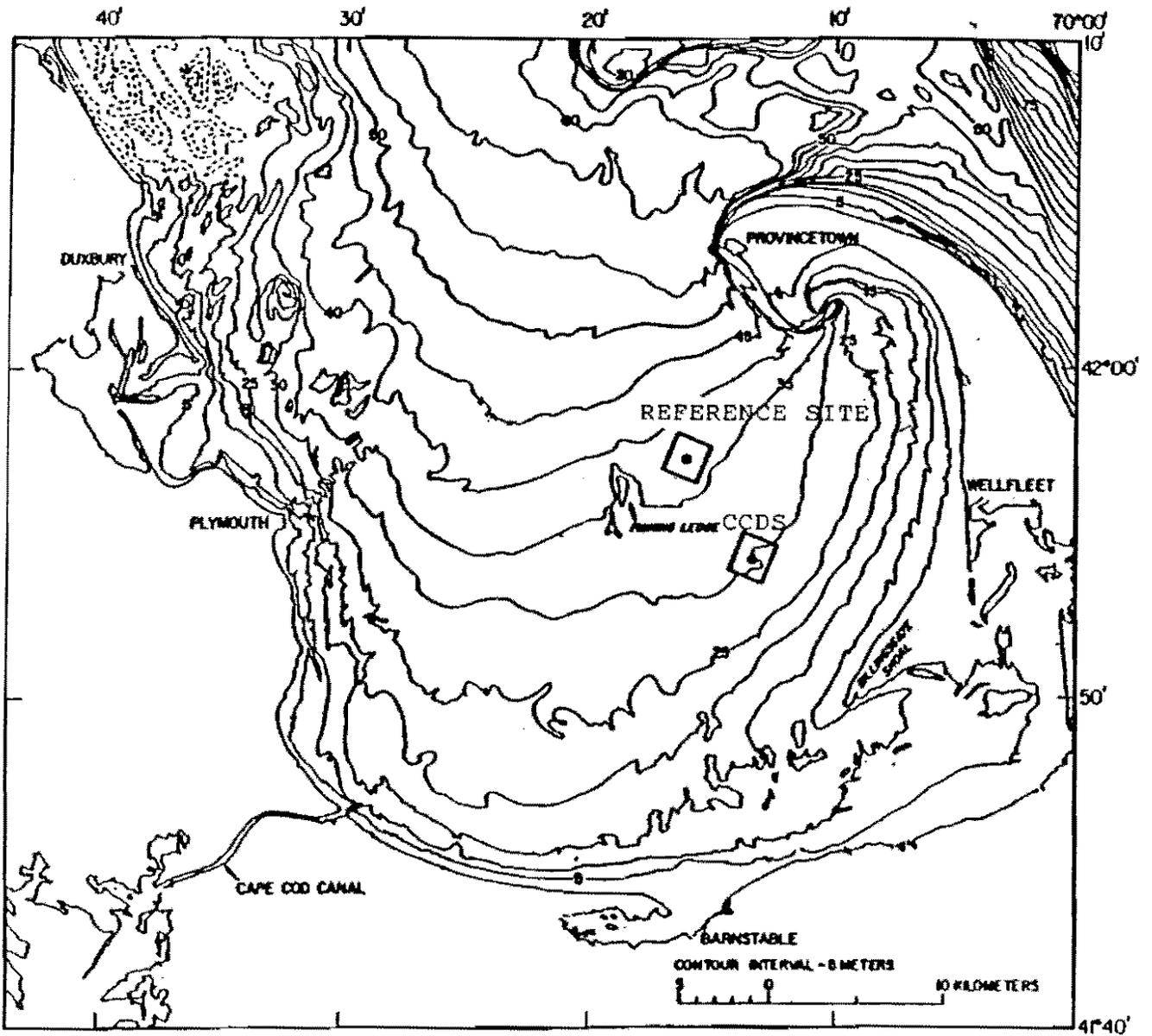


FIGURE 1. CAPE COD DISPOSAL SITE AND REFERENCE LOCATIONS WITHIN CAPE COD BAY.

after the retreat of the last Wisconsin glacialiation from the Cape Cod region. Basement rocks underlying the area of the site are approximately 180 meters below the present-day sea surface, indicating a total sediment thickness of roughly 150 meters. An examination of data from studies conducted for the FGEIR indicates that modern marine muds are thickest in Cape Cod Bay at or near the Reference Site. The conclusion of the FGEIR is that the CCDS may be characterized as depositional in nature, based on wave-induced and tidal current data. This is complicated, however, by the great variability of sediments found at the site on both an areal and temporal basis. Grab samples of sediments acquired during the studies for the FGEIR varied considerably over a short distance, and from one season of the year to another. Variations in sea bottom boundary roughness at the site may be attributable to a combination of prior dredged material disposal, and to biogenic topography, including fecal deposits or cones commonly exceeding 4 cm in height, of species such as *Molpadia oolitica*, a caudate holothurian form.

2.2.1.b. CCDS Wave-Induced and Tidal Currents

The general water circulation in Cape Cod Bay is counter-clockwise, thus giving a southerly component to circulatory water movements at the CCDS. Prevailing winds at the CCDS are from the southwest and southeast, with those from the southwest predominating. During storm events, strong winds occur from the northeast and northwest, but the site is somewhat protected from the build-up of large waves caused by northerly winds by its location south and east of Race Point, which limits the fetch over which large waves can be generated. The largest waves affecting the site are those resulting from strong southwest winds.

Because of the shallower water depth of the CCDS, wave action may have some effect in sediment re-suspension during major storm events, if wave heights reach a level where there is a direct effect on the bottom. Since the largest waves can be expected from southwest winds, however, and general circulation in the bay is counter-clockwise, wave-induced currents may be somewhat attenuated.

Tidal forcing appears to dominate current and sea surface fluctuations in Cape Cod Bay, including at the CCDS and Reference Site. Current velocities range from 10 to 20 cm/s, but can exceed 30 cm/s on occasion; mean current flow rates range from 2 to 10 cm/s. According to data gathered for the FGEIR, currents in the bay respond quickly to changes in wind direction and velocity, but are dominated by diurnal tidal motions. It is interesting to note that currents at depth during storms are greater than at the sea surface, according to the FGEIR current measurement data, ranging from 0 to 10 cm/s at the sea bottom as compared to 2 to 4 cm/s at the surface.

2.2.1.c. CCDS Hydrography

The hydrographic data developed by the investigations for the FGEIR show a classical seasonal fluctuation in degree that typifies mixing in a shallow enclosed basin. Mixing in winter is vigorous, the water system becoming well mixed vertically and horizontally, while significant stratification occurs during the warmer summer months, with instabilities developing at temperature and salinity density boundaries. Temperature fluctuation ranges from 1 C at the surface in winter to 20 C in summer, while bottom temperatures vary from 1.5 C in winter to 10 C in summer. Patterns of temperature, salinity, sigma-t, oxygen and attenuation observed during data acquisition for the FGEIR suggest that greater near-bottom re-suspension occurs in the deeper parts of Cape Cod Bay, but much less in the shallower areas, such as at the CCDS. The CCDS (Site B of the FGEIR) differs in temperature from the other sites studied, with temperature values being higher due to its relatively shallow depth. The observed range of salinities from 32.4 to 32.6 ppt correspond with those observed in open-ocean areas, and with those at the other sites studied for the FEIR, with differences seldom exceeding 0.3%. Light attenuation measurements showed that near-bottom waters at the historic disposal site (Station B-1, FGEIR) are less turbid than at other sites studied, indicating little re-suspension of sediments.

2.2.2. CCDS Sediment Characteristics

2.2.2.a. Sediment Grain Size Analysis and Distribution

Existing grain-size distribution maps for sediments on the floor of Cape Cod Bay show that the CCDS lies in an area of 10%-50% sand, and analyses of sediments at the site agree with this conclusion, showing sand percentages ranging from 14% to 32%. There is a significant decrease in sand percentage toward the northwest, attributable to the site's distance from Billingsgate Shoal, which it is thought contributes sand to the eastern portion of the site. Average silt content in site sediments ranges from 38% to 46%, while clay content ranges from 30% to 39%. Silt and clay size materials form a greater percentage of the sedimentary material on the western side of the site, with the percentage of sand increasing to the east and southeast consonant with possible movement of sand from Billingsgate Shoal.

It was noted that samples obtained during the cruises for the FGEIR investigations varied considerably in composition within a short horizontal distance of a few meters. A part of the reason for this variation was attributed to prior dredged material disposal at the location of Station B-1. Textural classifications derived from REMOTS sediment profile camera surveys at the site place 85% of the sediments in the silt/clay range.

Previous studies show the presence of black sulfidic sediments at several stations, having very low optical reflectance, and interpreted as representing fine-grained and organic-rich harbor muds placed as dredged materials. These occur in samples near the historic Wellfleet disposal site, while other stations show sorting of sediments ranging from silt to very fine sand-sized materials. The very fine sand fraction is found at stations near the center and in the southeast and northeast quadrants of the site.

The CCDS shows a positive redox (reduction-oxidation) layer at depths of from 4 cm to 10 cm below the sediment surface. The frequency distribution of oxic values in shallow oxic layers was found to be normally distributed about a major mode of 6 cm, and is thought to be controlled by a combination of diffusion of oxygen from the overlying water column and bio-turbational activity. Bio-turbational advection is considered as the dominant process controlling oxic depth in sediments at the site.

A principal factor that should be addressed in pre-disposal studies of the CCDS is a determination as to whether or not the site is depositional in nature, or whether re-suspension and dispersion of deposited sediments may become a matter of serious concern. This is addressed as a significant objective in the outline of studies to be performed prior to the initiation of any dredged material disposal operations at the CCDS.

2.2.2.b. Sediment Trace Element Concentrations

Trace element concentrations of bottom sediments at the CCDS were considered in the FGEIR to fall along predicted size/concentration relationships. Values were derived for As, Ni, Cd, Hg, Cr, Zn, Pb, and Cu in analyses of sediment samples from the site. Table 1. below compares average trace element concentrations from the CCDS with the established criteria (314 CMR 9.0) for Category I, II and III sediments.

Table 1.

Comparison of Average Trace Element Concentrations, CCDS
(ppm)

Element	CCDS	Criteria		
		I	II	III
Arsenic (As)	14	<10	10-20	>20
Cadmium (Cd)	0.7	<5	5-10	>10
Chromium (Cr)	43	100	100-300	>300
Copper (Cu)	18	<200	200-400	>400
Lead (Pb)	40	<100	100-200	>200
Mercury (Hg)	<0.3	<0.5	0.5-1.5	>1.5
Nickel (Ni)	22	<50	50-100	>125
Zinc (Zn)	84	<200	200-400	>400

(Criteria from 314 CMR 9.013)

In terms of other elements or compounds existing in botom materials at the CCDS, the sediments at Site B appear not to have been analyzed for PCB's (polychlorinated biphenyls), PAH's (polycyclic aromatic hydrocarbons), or chlorinated pesticides. While it can be presumed that the Site B sediment samples would have shown levels of these below detection limits, samples from the site should be tested to establish baseline information for future comparison. Sample analyses conducted prior to use of the CCDS will thus need to address existing levels of PCB's, PAH's and pesticides.

No bio-assay/bio-accumulation testing has been performed on samples from the CCDS, so no information as to potential mortality rates of test species using reference samples from the site is available. This hiatus in the data relating to site characterization is specifically adressed in pre-disposal studies to be conducted prior to use of the CCDS, if sufficient samples of benthic biota from the site can be obtained to provide confidence in the statistical significance of analytical results.

2.3. CCDS Biological Characteristics

2.3.1. Benthic Biology Census Data

A benthic biological survey of the CCDS was performed as a part of the studies pursuant to the FGEIR (Site B), and the data from these are presented in Tables 2 and 3. It was noted that the site is visited by feeding and nursing right whales during certain months of the year, and thus a seasonal window has been recommended during which disposal operations would be allowed. This window runs from mid-May through December, when the right whale is not normally

spotted in Cape Cod Bay. Provisions for trained and certified observers to accompany dredged material disposal operations are outlined in the section on monitoring during disposal. Further, more detailed information regarding benthic species occurring at the CCDS and its environs may be obtained by reference to the FGEIR and its Appendix C, which provides the data acquired during the benthic species census performed for the FEIR.

2.3.2 Endangered Species

Marine mammals such as whales and seals are frequently seen in eastern Cape Cod Bay, in the general vicinity of the CCDS, during the Spring and Summer months, and merit special consideration in terms of disposal site management. The Humpback Whale is common in the bay from early Spring to mid-Fall, where it is thought that they gather prior to their annual migration. The Right Whale is also a frequent visitor to the bay, in part because of its apparent preference for coastal areas, and is an endangered species due to over-exploitation by past commercial whaling. The pattern of movements of these whales, and their numbers during the summer months, provides an impetus for a thriving whale-watching industry in the general Cape Cod Bay area; the most common sighting ground is at Stellwagen Bank, but groups of whales have been sighted further into the bay.

Other endangered or threatened marine mammalian species commonly found in the eastern Cape Cod Bay area include Harbor and Gray Seals, which are widely distributed throughout the northeast coastal region. Additional species on the Endangered Species list of concern are the Kemps' Ridley, Hawksbill, Loggerhead, Green and Leatherback Turtles, of which the Kemps' Ridley seaturtle is most commonly found in eastern Cape Cod Bay waters, although live sightings have been rare.

TABLE 2.

PERCENTAGES AND RANKINGS OF MOST ABUNDANT BENTHIC SPECIES
AT CAPE COD DISPOSAL SITE

	Feb/85 % (Rank)	June/85 % (Rank)	Aug/85 % (Rank)	Dec/85 % (Rank)
<i>Spio limicola</i>	27 (1)	36 (1)	30.5 (1)	10.5 (4)
<i>Mediomastus californiensis</i>	16.5 (2)	24 (2)	29 (2)	20 (1)
<i>Euchone incolor</i>	12 (3)	8.5 (3)	3.5 (6)	8 (5)
<i>Cossura Longocirrata</i>	9 (4)	5.5 (4)	6.5 (4)	11.5 (3)
<i>Oligochaeta unident.</i>	6.5 (5)	5 (5)	8 (3)	20 (2)
<i>Aricidea catherinae</i>	4.5 (6)	5 (6)	4 (5)	7.5 (6)
<i>Prionospio steenstrupi</i>	4.5 (7)	3.5 (7)	3 (7)	- -
<i>Ninoe nigripes</i>	3 (8)	2.5 (8)	2.5 (8)	3 (8)
<i>Tharyx sp.</i>	2.5 (9)	1.5 (9)	1.5 (9)	6 (7)
<i>Levinsenia gracilis</i>	1.5 (10)	1 (10)	1.5 (10)	2 (9)
<i>Micrura sp.</i>	- -	- -	- -	2 (10)
<i>Nucula annulata</i>	- -	- -	- -	2 (10)
Cumulative percent	89.0	92.0	90.0	91.0

Table 3.

FINFISH AND SHELLFISH FOUND AT CCDS, BY TIME OF YEAR,
 RANKED ACCORDING TO NUMBER OCCURRING IN CATCH, 1981
 (from Howe and Germano, 1982)

Species	Spring	Summer	Autumn	Winter
Winter Flounder	1	3	3	4
Silver Hake	2	5	4	-
Red Hake	3	2	5	-
Ocean Pout	4	-	-	7
American Plaice	5	8	-	-
Yellowtail Flounder	6	6	6	9
Rock Crab	7	-	-	-
Alewife	8	-	-	-
Fourspot Flounder	9	10	10	-
Northern Sea Robin	10	-	-	-
Spiny Dogfish	-	4	-	-
Shortfin Squid	-	9	9	-
Atlantic Cod	-	7	-	-
Atlantic Herring	-	1	-	1
Longfin Squid	-	-	1	2
White Hake	-	-	7	-
Butterfish	-	-	2	5
Bluefish	-	-	8	-
Atlantic Silverside	-	-	-	3
Blueback Herring	-	-	-	6
Longhorn Sculpin	-	-	-	8
American Shad	-	-	-	10

3. CCDS MANAGEMENT PLAN

3.1. Management Plan Objectives

The CCDS Management Plan is designed to implement the objectives expressed in Section 1.2. to ensure that dredged materials disposed of at the CCDS are clean and do not vary widely from original chemical analyses of sediments in situ, that disposal operations do not interfere with marine life at the site, that disposed-of materials remain in place, and that post-disposal conditions at the site do not adversely affect the benthic ecosystem.

Specific objectives of the Management Plan are as follows:

- Establishment of a mechanism for periodic review and updating of management options and criteria for use of the CCDS for dredged material disposal.
- Assurance that dredged materials disposed of at the CCDS meet state and Federal guidelines relating to sediment character and toxic levels, based upon the testing protocols provided in the Federal "Green Book" and NED/EPA Protocols.
- Assurance that materials destined for disposal at the CCDS actually are deposited at the site, as verified by accurate disposal records.
- Protection of endangered marine species that frequent the CCDS, including the protection of right whales and other marine mammals from interference by dredged material disposal operations.
- Provision for accurate marking of the site for disposal operations, and for regular maintenance of site markers.
- Determination of appropriate data reporting, management, and utilization for evaluations of effectiveness of management and monitoring plan implementation.

3.2. CCDS Management Plan

An effective management plan for the CCDS should consist of a set of activities and requirements aimed at clearly achieving the objectives outlined above, with provision for periodic review and revision to meet changing needs or less than optimal success, and for continuity of approach. The management plan must provide for both ensuring that dredged materials deposited at the site are compatible with those tested, and for ensuring that the materials

are in fact deposited at the site. The basic elements of the management plan to meet these goals for the CCDS are outlined below:

- a. Establishment of a Disposal and Monitoring Advisory Committee (DMAC) whose function will be to review specific management and monitoring activities and procedures, and to recommend improvements or modifications to meet the need for ensuring protection of the marine ecosystem while providing for safe disposal of suitable dredged materials. The determination of suitability of dredged materials for disposal at the CCDS will rest with the existing regulatory process. Membership of the committee will be composed of representatives of each of the relevant regulatory agencies, environmental interest groups, and the marine construction industry.
- b. Conduct of management and monitoring activities by DEM's Office of Waterways, under the general guidance of the Disposal and Monitoring Advisory Committee.
- c. Performance of pre-disposal investigations to characterize existing conditions at the CCDS, prior to use for disposal.
- d. Marking the dredged material release point at the CCDS with a taut-wire moored buoy, with an established maintenance program to ensure its physical integrity and accuracy of positioning.
- e. Requirements for inspectors/observers to accompany vessels engaged in disposal operations, to ensure accurate positioning at time of release, and to determine alternate release sites when the site is occupied by marine mammalian species. This requirement will be met by inclusion of appropriate conditions on Corps of Engineers permits for disposal at the site, and by the filing of duplicate cruise reports with DEM.
- f. Defining reports and data to be retained by DEM, data management systems and methodologies to be employed, and retention/retrieval of records and reports for annual reporting, comparisons with monitoring data, evaluation of long-term trends, and preparation of ENF every three (3) years.

3.2.1. Disposal and Monitoring Advisory Committee

As mentioned above, the purpose of the Disposal and Monitoring Advisory Committee (DMAC) will be to advise DEM on issues relating to CCDS management, the development of monitoring plans, and the

evaluation of management program effectiveness in protecting the ecosystem at the CCDS. This will include review and comment on management options and monitoring methodologies, and the making of recommendations on revisions or modifications to the M/MP in light of new data, as it becomes available, in order to improve the overall effectiveness of site management and protection of the marine environment.

Membership of the DMAC may include, but not be limited to, technical or scientific representatives of the following Federal and state agencies:

- U.S. Army Corps of Engineers, Regulatory Branch
- U.S. Environmental Protection Agency
- National Marine Fisheries Service, NOAA
- Mass. Office of Coastal Zone Management
- Mass. Department of Fisheries, Wildlife & Environmental Law Enforcement
 - Division of Marine Fisheries
 - Natural Heritage and Endangered Species Program
- Mass. Department of Environmental Protection
 - Division of Wetlands and Waterways Regulation
 - Division of Water Pollution Control
- Mass. Department of Environmental Management
 - Office of Waterways
 - Ocean Sanctuaries Program
- Environmental Interest Group Representatives - 2
- Cape Cod Commission
- Dredging Interests - 2

It is envisioned that the DMAC will meet at least two times per year, as indicated in the Secretary's Certificate, to review available information on projects disposing of dredged materials at the CCDS, to review monitoring reports and data, to advise DEM on disposal site management and monitoring issues, and to make recommendations to the Secretary of the Executive Office of Environmental Affairs regarding any revisions or alterations to the M/MP. Copies of DMAC recommendations will be provided to each of the regulatory agencies having authority to grant permits or to review dredging/disposal permit applications.

DEM will receive copies of permits issued for all projects using the CCDS for dredged materials disposal, along with copies of sediment analysis reports submitted with Environmental Notification Forms (ENFs) or other permit applications. It is emphasized here that this function is not to be construed in any way as representing or replacing any existing regulatory agency role or function, and that the information to be provided to DEM is for record and monitoring purposes only. DEM will coordinate with the regulatory agencies for this purpose, through existing coordinative mechanisms.

DEM will also receive duplicate copies of cruise reports from disposal operations, and reports of periodic monitoring surveys of the CCDS. These will be provided to the DMAC for their review as to the adequacy of management and monitoring activities in meeting the defined objectives outlined for each activity. These objectives include, but may not be limited to, determinations as to the depositional nature of the CCDS and potential sediment redistribution, effectiveness of management options in protecting the safety and health of marine mammalian species transiting or using the site, and the effect of disposed sediments on benthic species. Following its review of the reports and related documentation, the DMAC will make recommendations to the Secretary of EOEPA on revisions to the monitoring plan that would improve the effectiveness of site management.

DEM will make an annual report to the Secretary of EOEPA on the state of the CCDS, detailing any problems encountered, suggesting remedies for any inadequacies found, and making recommendations as noted above relating to improvements to the M/MP and monitoring activities pursuant to it. The report will also contain relevant information related to the volume, texture and quality of sediments disposed of at the CCDS during the previous year, and their location and areal distribution as far as can be determined using existing technology. The report will be reviewed by the DMAC prior to being submitted in final form to the Secretary of EOEPA.

It is envisioned that the DMAC may serve as a forum for public comment on disposal management and monitoring issues at the CCDS, but that it will not supersede or be substituted for any other means of obtaining public comments established by legislation or regulations, such as regulatory or statutory public notice and review periods related to Environmental Notification Forms, Environmental Impact Reports, Notices of Intent, or applications for Water Quality Certificates or Certifications of Consistency with an approved Coastal Zone Management Plan.

3.2.2. Pre-Disposal Dredged Material Analysis Records

Existing regulations and guidance will be followed in analyzing for chemicals in sediments. As noted above, copies of issued permits for use of the CCDS for dredged material disposal will be provided to DEM by the relevant regulatory agencies, employing existing interagency coordinative mechanisms.

The Department of Environmental Protection's (DEP's) Division of Water Pollution Control issues 401 Water Quality Certification for dredging and disposal activities pursuant to 314 CMR 9.00. Review includes:

- an evaluation of sediment bulk chemical and biological test results, and

TABLE 4

TARGET CONSTITUENTS TO MEASURE IN SEDIMENTS, WATER AND TISSUES

- I. Total Organic Carbon¹
- II. Grain Size Analysis (percent sand, silt & clay)¹
- III. Percent Water¹
- IV. Polychlorinated Biphenyls (PCBs)
- Total PCBs
 - Aroclor 1242
 - Aroclor 1248
 - Aroclor 1254
 - Aroclor 1260
 - Individual PCB Congeners
 - 8 - 2,4'-dichlorobiphenyl
 - 18 - 2,2',5-trichlorobiphenyl
 - 28 - 2,4,4'-trichlorobiphenyl
 - 44 - 2,2',3,5'-tetrachlorobiphenyl
 - 47 - 2,2',4,4'-tetrachlorobiphenyl
 - 52 - 2,2',5,5'-tetrachlorobiphenyl
 - 66 - 2,3',4,4'-tetrachlorobiphenyl
 - 101 - 2,2',4,5,5'-pentachlorobiphenyl
 - 105 - 2,3,3',4,4'-pentachlorobiphenyl
 - 118 - 2,3',4,4',5-pentachlorobiphenyl
 - 128 - 2,2',3,3',4,4'-hexachlorobiphenyl
 - 138 - 2,2',3,4,4',5-hexachlorobiphenyl
 - 151 - 2,2',3,5,5',6-hexachlorobiphenyl
 - 153 - 2,2',4,4',5,5'-hexachlorobiphenyl
 - 170 - 2,2',3,3',4,4',5-heptachlorobiphenyl
 - 180 - 2,2',3,4',5,5',6-heptachlorobiphenyl
 - 187 - 2,2',3,4',5,5',6-heptachlorobiphenyl
 - 194 - 2,2',3,3',4,4',5,5'-octachlorobiphenyl
 - 195 - 2,2',3,3',4,4',5,6-octachlorobiphenyl
 - 206 - 2,2',3,3',4,4',5,5'-nonachlorobiphenyl
 - 209 - 2,2',3,3',4,4',5,5',6,6'-decachlorobiphenyl
- V. Chlorinated Pesticides
- Hexachlorobenzene
 - Lindane
 - Alpha-Chlordane
 - Gamma-Chlordane
 - Oxychlordane²
 - Dieldrin
 - Trans-nonachlor
 - p,p'-DDD
 - p,p'-DDE
 - p,p'-DDT
 - Mirex

VI. Polycyclic Aromated Hydrocarbons (PAHs)

Sum of parent PAHs
Fluorene
Phenanthrene
Anthracene
C1 homologs of phenanthrene and anthracene
C2 homologs of phenanthrene and anthracene
C3 homologs of phenanthrene and anthracene
C4 homologs of phenanthrene and anthracene
Fluoranthene
Pyrene
Benz(a)anthracene
Chrysene
Sum of benzofluoranthenes
Benzo(a)pyrene
Benzo(e)pyrene
Perylene
Indeno(1,2,3-cd)pyrene
Benzo(g,h,i)pyrene
Sum of molecular weight 276 PAHs
Dibenz(a,h)anthracene
Sum of molecular weight 278 PAHs
Coronene
Sum of molecular weight 302 PAHs

VII. Trace Metals

Aluminum (Al)¹
Cadmium (Cd)
Lead (Pb)
Antimony (Sb)
Nickel (Ni)
Tin (Ti)
Silver (Ag)
Mercury (Hg)
Arsenic (As)
Chromium (Cr)
Copper (Cu)
Selenium (Se)
Zinc (Zn)
Iron (Fe)
Manganese (Mg)

¹ Sediment analysis only
² Tissue Analysis only
-

- a determination of required mitigation measures needed to protect water quality and the water's existing and designated uses, including its use by fish, other aquatic life, and wildlife pursuant to 314 CMR 4.00.

DEP's Division of Wetlands and Waterways Regulation issues Waterways Permits, which pertain to activities related to dredging, including beach nourishment, dredging, and disposal involving subaqueous placement of unconsolidated materials.

Copies of the above permits should be provided to DEM through existing interagency coordination channels, as noted, and should include a copy of a sediment analysis report that also indicates sample collection and handling procedures. Any procedures for handling or storage differing from those indicated in the relevant guidelines or protocols should also be indicated in the report. The report should be accompanied by an indication of the quality assurance/quality control procedures employed by the testing laboratory.

it is presumed that existing regulations and guidances will be followed, and that informational requirements will not differ from those of existing regulatory programs. It is thus anticipated that all sediment analysis reports provided with copies of issued permits for use of the CCDS would include analyses for concentrations of the trace elements and chemicals shown in Table 4, insofar as required by existing regulations and guidances, as well as reports of mortality rates from any bio-assay/bio-accumulation testing performed as a result of regulatory requirements.

3.2.3. Dredged Materials Transportation and Release

It is recommended in this plan that all dredged materials to be placed at the CCDS be transported in scows or barges designed for rapid bottom release of the material. The release mechanism may be mechanical or hydraulic, but should be designed for quick opening and full release, so that released materials may fall to the bottom as a relatively coherent mass. It is anticipated that this approach should minimize the development of a suspended sediment plume during transit of the material to the bottom. Scows or barges used should have been inspected and certified as seaworthy by the U.S. Coast Guard, and should bear a valid inspection sticker.

3.2.4. Inspection and Observer Requirements

DEM will request that all vessels transporting dredged materials to the CCDS for disposal be accompanied by a trained and certified inspector, consistent with existing regulatory practice, whose

responsibility will be to ensure that materials are released at the location specified in the issued permits for site use. The inspector should be an individual acceptable to the Corps of Engineers, Regulatory Branch, and NOAA's National Marine Fisheries Service, with a valid certification as required by each. The inspector will be retained by the project proponent at no cost to DEM.

Upon completion of disposal operations, the inspector will provide to DEM a duplicate copy of a completed Corps of Engineers standard form entitled, "Inspector's Daily Report of Disposal by Scow", and any other information considered to be relevant or that is required as a condition of disposal by other regulatory agencies, in the form of a Cruise Report.

The location of release of dredged materials at the CCDS should be verified by differential GPS (global positioning system). A copy of the Cruise Report will be provided to the DEM Office of Waterways within ten (10) working days following completion of materials transport, release and return. This procedure may be modified at any time to remain consistent with existing regulatory requirements for use of Federally managed disposal sites.

DEM will also request that provision be made by project proponents to have a trained, experienced and approved Marine Mammal Observer accompany the vessel transporting dredged material to the CCDS for release. The Observer may or may not be the same individual as the Inspector; if an inspector acceptable to the Corps of Engineers and NOAA's National Marine Fisheries Service (NMFS) is also approved by NMFS as a Marine Mammal Observer, then the inspector may fulfill both functions. If not, then two individuals should be required, one inspector and one observer.

The Marine Mammal Observer will be responsible for the avoidance of injury to marine mammals that may be at the CCDS at the time of disposal operations, and to maintain a record of sightings of marine mammals and sea turtles. If, when approaching the CCDS during disposal operations, marine mammals are sighted within 1/4 mile of the taut-wire buoy, no release of dredged materials should occur either until the marine mammals have exited the site or an alternative release site has been specified by the Marine Mammal Observer. The alternative release site should be in accord with the conditions of the Corps of Engineers Permit. At no time, however, should the alternative release site be less than two (2) boat lengths from the sighted marine mammals. For the purpose of this provision, a boat length shall be considered to be the sum of the length of the scow or barge carrying the dredged materials and its towing vessel, but not less than 500 feet. Upon completion of disposal activities, a duplicate completed copy of the "Endangered Species Sighting Log", as provided by NMFS, should be submitted to DEM's Office of Waterways.

3.2.5. Disposal Site Marking

The release point at the CCDS for disposal of approved dredged materials will be designated with reference to a taut-wire buoy moored at the CCDS, to be emplaced by DEM's Office of Waterways. The taut-wire moored marker buoy will conform to the specifications shown in Figure 2, as developed by the Corps of Engineers for the taut-wire buoy used at the Massachusetts Bay Disposal Site (MBDS). The initial location of the buoy will be determined by DEM with advice from the DMAC. Differential GPS (global positioning system) will be used to provide accurate positioning. All locational reference data will be recorded for subsequent use for periodic verification of the buoy's position on station.

Periodic position verification using differential GPS will be an integral part of the buoy maintenance program, along with annual inspection and cleaning of its mooring cables and anchoring system. This inspection will also be done at times when the buoy is re-located within the CCDS to change the release point location at the site. Buoy relocation will be done periodically to ensure that there is an even distribution and build-up of dredged materials at the CCDS. The purpose is to maintain site capacity and ensure that slope angles on deposited materials will not contribute to sediment re-suspension or dispersion.

3.2.6. Data Management and Reporting

All records, reports, relevant information and data acquired through activities pursuant to pre-disposal surveys and during and post-disposal monitoring at the CCDS will be maintained at a central location by DEM's Office of Waterways, in order to have it available for future reference and evaluation. Files will be set up for hard copy of records and reports, and a computerized data base will be established for survey and statistical data compatible with the MGIS (Massachusetts Geographic Information System), as well as for traditional statistical analyses. The records, reports and other data to be retained on file will include minutes of DMAC meetings, copies of relevant memoranda and correspondence, and copies of permits and sediment analyses for disposal projects.

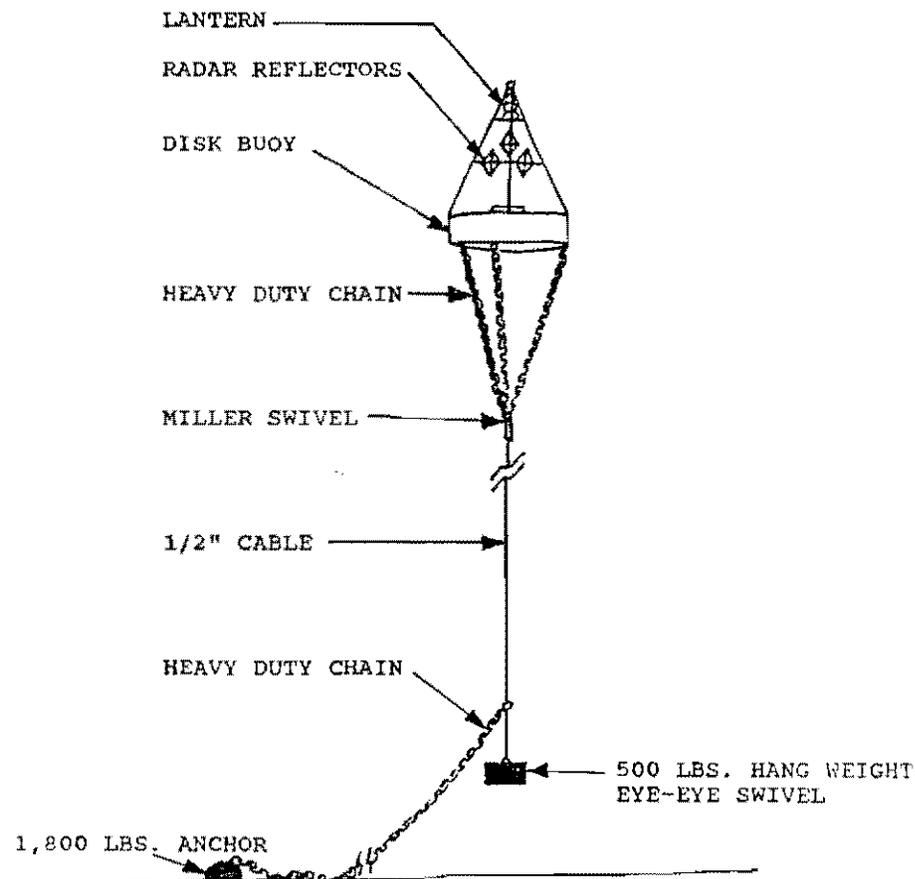
FIGURE 2.

Taut-Wire Marker Buoy Specifications and Configuration

SPECIFICATIONS

Buoy Dimensions	
Disc:	6' diameter, 3' height with conical bottom
Tower:	4 leg, 7' height
Battery Well:	2' diameter, 1' height
Construction:	Steel
Buoyancy:	2,000 lbs.
Color:	Yellow epoxy paint
Radar Reflectors:	4 each mounted at right angles
Lantern:	ML-155 type case with yellow lens (USCG approved)
Lamp Flasher	
Change Type:	TF-3B/3C
Light Characteristic:	
	3.6 sec. off, 0.4 sec. on
Power Source:	6.0 VDC Battery, air activated or 2 X 6.0 VDC dry cell
Chain:	3/4" heavy duty hot dip galvanized
Wire:	1/2", 6 X 19 torque balanced
Terminations:	3/4" HD thimbles cleansed with hydraulic crimped Nicopress sleeves
Mounting Hardware:	5/8" safety shackles locked with stainless steel cotter pins
Swivels:	1 Miller swivel 3 ton, 1 eye fisherman's type
Hang Weight:	500 lb. clump
Anchor:	1,800 lb. steel sphere

CONFIGURATION



4. MONITORING PLAN

4.1. Pre-Disposal Investigations

This section outlines studies to be conducted at the CCDS (Site B, FGEIR) in order to establish existing baseline conditions, with the understanding that these conditions include the materials already deposited at the site as a result of disposal of dredged materials from previous navigational dredging of the Wellfleet Harbor entrance channel and manoeuvring area. The investigations will emphasize acquisition of data relating to bathymetry and sediments, since considerable information already exists relative to hydrography and living resources. All pre-disposal surveys will be conducted using a precision navigation system such as (but not limited to), a microwave transponder or differential GPS with a positional accuracy of ± 3 meters, that has been certified as having been calibrated within 90 days of conducting the survey.

In addition to the surveys outlined below, information will be sought and evaluated relating to sightings of whales, turtles and other endangered species reported at or near the CCDS. This information will be requested from organizations engaged in cetacean research, whale watching, and tour boat operations, such as the New England Aquarium, the Institute for Cetacean Research, the Center for Coastal Studies, and others. Data acquired from these sources will be utilized in an initial assessment of the probable effectiveness of the environmental window of mid-May through December established in the Secretary's Certificate on the FGEIR in protecting endangered species from possible injury or adverse health effects resulting from dredged material disposal operations.

4.1.1. Pre-Disposal Bathymetric Survey

Prior to any disposal operations taking place at the CCDS, a bathymetric survey will be performed to characterize the existing bottom configuration. The survey will be performed by a vessel equipped with a precision fathometer or comparable continuous depth measurement instrument, transiting the site in a grid pattern with 50 meter lane spacing intervals, each lane or leg being at least 2.5 kilometers in length, in order to cover the entire site and its immediate environs, using the central point of the site as the center point of the surveyed area. Continuous measurements will be made and recorded in a chart format. This information will be used for subsequent preparation of a detailed chart or map showing sea bottom topography at the site. Depth contours to be shown on the chart will be at one (1) foot intervals. The scale of the chart will be sufficient to provide for depiction of adequate bathymetric detail, and to allow its use for subsequent sedimentary and other investigations.

In addition to the above, an acoustic survey will be performed to provide information relating to the thickness of existing sediments and dredged materials at the site. This will be performed simultaneously with the bathymetric survey, from the same vessel, utilizing continuous acoustic survey equipment and strip chart recorder. The specific equipment to be used for the survey will be determined upon the basis of its ability to provide a clear profile of sub-bottom sedimentary interfaces and grain size relationships to a minimum depth of 10 meters below the sea bottom, while also showing the sediment-water interface (sea bottom topography).

The purpose of acquiring the sediment profile is to determine the existing sedimentary thicknesses, and to provide a basis for comparison with data from the sediment profile camera survey and sediment cores taken under 4.1.2. and 4.1.3. below, and after future disposal activities in order to estimate dredged material thicknesses. Sediment profile data from the survey will be used to compile a thickness map using the same scale as that employed for the bathymetric survey, and to provide a secondary source of information on sea bottom topography.

A similar survey will be performed at the Reference Site (Site C, FGEIR), utilizing the same equipment, during the same season and periods of similar sea state. The Reference Site survey will, however use a wider lane spacing of 100 meters.

4.1.2. Pre-Disposal Sediment Profile Camera Survey

A sediment profile camera survey vey will be performed utilizing equipment such as, but not limited to, the REMOTS (Remote Ecological Monitoring Of The Seafloor) camera, designed to penetrate the sea floor and provide a visual record of the bottom sediment profile. The objective of the sediment profile camera survey is to determine pre-disposal benthic conditions that include sediment grain-size, sediment profiles, and indications of benthic organisms and their distribution within the sediments at the CCDS. The survey coverage will include the site and peripheral areas with a 70 station sampling grid (three replicates per station). A further 27 stations around three supplemental locations a short distance outside the CCDS (nine stations per supplemental location, three replicates per station) will be sampled. These samples will be arranged in a cross-shaped pattern around the supplemental location center point and spaced 100 meters apart. The three supplemental locations will be no more than one kilometer from the CCDS site outer boundary.

A sediment profile camera survey will also be performed at the Reference Site, but the survey will be at or near the center point of the site, and will consist of a single cross-shaped pattern, utilizing nine stations, with three replicates per station, each station being 100 meters apart.

4.1.3. Sediment Chemistry Survey

A survey of sediment chemistry will be performed to characterize the physical and chemical nature of existing sediments at the CCDS prior to any disposal operations. The survey will include collection of triplicate sediment and grain size samples at 10 stations within the disposal site and at each of three supplemental stations around the periphery of the CCDS (within 1 kilometer of the CCDS boundaries). A 10 cm. core will be taken from an individual benthic grab sample for each core. Chemistry samples will be stored in commercially available pre-cleaned glass sample jars (I-Chem or equivalent), refrigerated, and analyzed for grain size, total organic carbon, metals, PAHs, PCBs, and pesticides, utilizing the list of metals and compounds provided in Section 3.2.2.a. above. All data from chemical analyses will be presented in a standard format that is compatible with existing guidelines as expressed in the Federal "Green Book" and the NED/EPA New England Protocols.

Sediment samples will also be taken at the Reference Site for grain size and chemical analysis, using the procedures outlined above, but limited to 4 stations within the Reference Site area.

4.1.4. Determination of Disposal Site Capacity

The information gained in the above survey activities will be used in the calculation of probable volumetric capacity of the CCDS for dredged materials disposal. The results of this calculation will be compared with existing information relative to proposed and potential dredging activities in the Cape Cod region that would probably use the CCDS for disposal, to estimate the length of time that the site should be considered for use. The maximum amount of material that can be placed at the CCDS without causing adverse environmental impacts in terms of habitat damage will be estimated, with an indication of what kind and degree of potentially adverse impacts may result.

4.1.5. Pre-Disposal Survey Reporting

Data and interpretations from the pre-disposal survey of the CCDS will be compiled into a written report that presents a description of the baseline character of the benthic environment at the site. This information will be utilized for comparison purposes in future post-disposal monitoring, and is intended to serve as a gauge for determinations relating to any adverse impacts resulting from disposal operations. The report will also include recommendations regarding the volume of dredged materials considered as optimal for disposal at the CCDS, and the estimated length of time for which it will be used.

The survey report is also intended as a basis for establishing recommended criteria by the DMAC for subsequent decision-making as to future continuation of site use in the event of unexpectedly adverse impacts appearing due to changes in sediment character or chemistry resulting from dredged material disposal. It will also be used in an initial evaluation of the potential effectiveness of the mid-May through December environmental window in protecting marine mammalian species using or transiting the site.

4.1.5.a. Report Review Process

A draft report of the survey activities, findings and conclusions will be prepared by DEM and submitted to each member of the DMAC for review and comments relating to its technical content, data interpretations, and any relevant recommendations made as a result. The draft report will also be made available to the general public for review and comment, with an informational presentation to be made by DEM at a public meeting specifically held for that purpose.

The comment period for the draft report will be thirty (30) days, from the date of the public informational meeting, after which all written comments received by DEM will be evaluated and, insofar as possible, incorporated into the final version of the report. The comment letters received will form an appendix to the final report, along with more detailed data from the field investigations. Raw data from the pre-disposal investigations will also be input into a computerized data base for future reference.

The final report on baseline conditions at the CCDS will be re-submitted to the DMAC for final approval prior to transmittal to the Secretary of EOEPA with the committee's recommendation for acceptance, and for final designation of the CCDS for dredged material disposal subject to specific conditions recommended by the DMAC for inclusion as conditions to permits for disposal at the CCDS.

4.2. Disposal Monitoring

Monitoring during disposal operations is intended to ensure that dredged materials destined for the CCDS are in fact disposed of at the site, at the designated or selected alternate location, and in accordance with the conditions of relevant permits. The during-disposal monitoring will employ presently existing procedures as required by regulatory programs, but will be supplemented by provision of copies of relevant permits and sediment analyses to DEM by the regulatory agencies through the existing interagency coordinative process. These will further be supplemented by duplicate copies of Cruise Reports, which will be provided to DEM upon completion of the disposal project, as indicated above. The activities outlined in the monitoring plan are thus similar to

those currently used to monitor disposal at Federally managed disposal sites; this plan thus presumes that applicable conditions will be similar to those incorporated into other permits for ocean disposal.

4.2.1. Inspector/Observer Requirement

All dredged material disposal operations at the CCDS must be accompanied by a trained, experienced and certified inspector and marine mammal observer, whose responsibility will be to ensure that disposal release occurs at the location designated in the conditions to the Corps of Engineers permit, or at an appropriate alternative location if marine mammals are present at the site. The inspector/observer should complete a the standard Corps of Engineers form as noted above, and submit a duplicate copy of the form to the DMAC. All information will be recorded in a manner similar to that required for disposal at the MBDS.

4.3. Post-Disposal Monitoring

Post-disposal monitoring at the CCDS will be comprised of a suite of field studies or investigations designed to determine the effect of disposal activities on the benthic environment as compared to pre-existing site conditions. Specific issues that should be addressed by the post-disposal monitoring activities will include:

1. Depth and areal extent of dredged material deposited at the site.
2. Changes in site sedimentary characteristics and chemistry.
3. Depositional/dispersional nature of site based on evidence of sediment re-suspension and movement.
4. Effects of disposal activities and deposited materials on invertebrate/vertebrate marine life in the vicinity of the site, including endangered species.
5. Uptake of any contaminants present in disposed materials into the benthic food web, and potential public health effects from commercial finfish/shellfish species from vicinity of site.
6. Remaining capacity of site for future dredged material disposal activities.
7. Effectiveness of the mid-May through December environmental window in protecting marine mammalian or other endangered species using or transiting the CCDS.

8. Effectiveness of the management plan and monitoring program in ensuring environmentally sound disposal of dredged material while protecting the benthic ecosystem at the site vicinity.
9. Revisions of during-disposal monitoring provisions or dredged material analysis requirements for improved protection of the benthic environment at the site.

These objectives have been carefully considered in the development of the following post-disposal monitoring program, and in the design of specific periodic field studies. In general, post-disposal monitoring will be performed one year after the first use of the site for dredged materials disposal, followed by a another round of studies at the end of the second year. If site use and conditions do not warrant maintaining an equally intensive monitoring effort in subsequent years, post-disposal monitoring activities will then be conducted every five years thereafter, with an emphasis on determination of disposed sediment thickness and areal extent, rates of re-colonization of deposited materials by benthic species, and evaluation of marine organisms from the site vicinity relative to analysis of trace metal and toxic chemical concentrations in organs and tissues.

4.3.1. First Year Monitoring

One year after the first use of the CCDS for dredged materials disposal, a suite of monitoring activities will be implemented that will consist of the following:

1. Precision bathymetric survey, focussed on the area of disposed dredged materials, for determination of changes in bottom topography due to disposal mounds, thickness and extent of disposal mounds.
2. Sediment sampling in disposal mound areas, re-occupying stations used for pre-disposal sampling, accompanied by sediment analysis for target analytes, performed in accordance with Section 3.2.2.
3. Sediment profile camera survey focussing on disposed material areas but re-occupying stations used in pre-disposal survey, for determination of sediment profile in mounds, sediment thickness and texture, and dissolved oxygen, and presence of benthic organisms.

The monitoring work will be coordinated with the Division of Marine Fisheries in terms of their sampling of commercially viable finfish and shellfish species in the site vicinity, and the acquisition of organ and tissue analysis results for determination of any increase in trace metal or toxic chemical uptake in the food chain. All

information acquired during the monitoring studies will be compared with data from the pre-disposal studies to detect and evaluate any changes that may have occurred in site sediment quality and benthic ecology.

Assistance will also be sought from regional organizations engaged in cetacean research and whale-watch cruises regarding whale and turtle sightings in the vicinity of the CCDS sight. The purpose of this effort is to track the times of year when whale sightings at or near the CCDS most often occur, and to evaluate the relative effectiveness of the environmental window (mid-May through December) in protecting them from injury or adverse effects resulting from dredged material disposal operations.

The first disposal project at the site will be maintained separate from subsequent disposal activities by moving the taut-wire buoy after completion of disposal operations for the first project. The monitoring activities indicated for the site as a whole will also apply specifically to the first disposal mound, with an effort to obtain detailed information as to settlement or shrinkage of the mound. If the settlement of the top elevation of the mound is found to be in the range of 20 cm. to 50 cm., it may be presumed that the site is dispersive in nature (T. Fredette, Personal Communication), and a recommendation may be made to discontinue use of the site for dredged material disposal activities.

A draft report of the results of the monitoring studies will be prepared by DEM and submitted to the DMAC for its review and evaluation. Written comments will be received for a period of thirty (30) days, at which time the comments will be utilized in revision of the draft report. The revised report will be submitted to the DMAC for final review and approval, and for transmittal to the Secretary of EOE along with any recommendations for revisions to the Management and Monitoring Plan.

4.3.2. Second Year Monitoring

At the end of the second year after first use of the CCDS for dredged materials disposal, another round of monitoring activities will be undertaken. These will repeat the surveys employed in the first round of monitoring studies, utilizing the same stations used for the first-year round of monitoring surveys, and further evaluate whale sighting data. The second year monitoring report will compare the results obtained with data on pre-existing site conditions and benthic ecology, as well as with the data and conclusions of the first year-monitoring activities. Report review, comment and approval procedures will remain essentially the same as in Section 4.3.1. above.

4.3.3. Preparation of Environmental Notification Form

In compliance with MEPA regulations, an Environmental Notification Form (ENF) will be prepared by DEM and submitted to the MEPA Unit before the end of the third year of site use for dredged materials disposal. The ENF will make note of any adverse effects deriving from use of the CCDS, and incorporate any DMAC recommendations regarding revisions to the management and monitoring plan. In accordance with existing regulations, an ENF will be filed every three (3) years following the completion of the first three-year period.

4.3.4. Fifth Year Monitoring

The monitoring procedures employed in the first and second years will be repeated at the end of five years after the first use of the CCDS for dredged material disposal, but will focus on the site as a whole, with sediment samples taken at stations used in the pre-disposal baseline investigation. A sediment profile camera survey will re-occupy the same stations as those used in the pre-disposal surveys, to determine changes in site sedimentary characteristics. An inventory will be made of benthic organisms occurring at the site, with samples taken and tissues analyzed to evaluate the existence of contaminants introduced from dredged materials disposed of at the site. The inventory will also address the question of re-colonization rates on disposed material mounds.

A detailed report of the fifth-year monitoring studies will characterize the condition of the CCDS after five years of dredged materials disposal, the volume of materials placed at the site, any dispersion of materials that may have occurred, and the remaining capacity of the site for future dredged material disposal. It will also address concerns relating to the health of the site ecosystem, quality of water and sediments at the site, and the effect of disposal activities on benthic organisms, especially endangered species that use or transit the site on a regular basis.

This report will follow the same review, comment and approval procedures as those discussed above, and will include any conclusions or recommendations relevant to effectiveness of the management and monitoring program and its improvement.

4.3.4. Five Year Monitoring Program

The post-disposal monitoring activities carried out at the end of the fifth year after first use of the CCDS for dredged materials disposal will be repeated at the end of every five year period thereafter, or such other period as advised by the DMAC. Insofar as the accuracy of navigational positioning equipment permits, the same stations will be re-occupied, and the same level of survey

activities will be pursued. The results and conclusions of these monitoring surveys will be compiled into a report to the Secretary of EOE, along with recommendations and suggestions for any modifications or improvements to the CCDS Management and Monitoring Plan.

If at any time the periodic monitoring detects that adverse effects are occurring to the benthic ecosystem at the CCDS, further dredged material disposal operations at the site will be suspended, at which time more detailed investigations should be initiated to determine, insofar as possible, the precise nature of the adverse effects and their cause. The methodologies and techniques to be used will be determined by the nature of the problem, and a report of the nature and cause of harm to the ecosystem will be prepared for submission to the Secretary of EOE. The report will include recommendations for correction or remediation of the problem, or if deemed to warrant, for the cessation of any further dredged material disposal at the CCDS.

4.3.5. CCDS Closure

The CCDS will be considered as closed at such time as the estimated capacity of the site for dredged material disposal has been reached, at the cessation of dredged material disposal due to unexpectedly adverse effects on the benthic ecosystem, or if the site is found to be dispersional in nature. At that time, surveys comparable to those performed for the five-year periodic monitoring effort, except as mentioned above, will be carried out to determine conditions at the site at time of closure, and a report to the Secretary of EOE will be prepared in accordance with the procedures employed for the periodic monitoring. Monitoring will continue for an additional period of five years after closure of the CCDS to determine any longer-term effects that may have occurred.

BIBLIOGRAPHY

1. Battelle Memorial Institute (1990), "FINAL ENVIRONMENTAL IMPACT REPORT FOR THE IDENTIFICATION OF DREDGED MATERIAL SITE(S) IN CAPE COD BAY, MASSACHUSETTS", Duxbury, MA.
2. Beach, Douglas W., National Marine Fisheries Service (1993), Marine Mammal Observer Requirements and Training, Gloucester, MA, correspondence with US Army Corps of Engineers.
3. Howe, Arnold B., and Frank J. Germano, Jr. (1982), "FISHERIES AND ENVIRONMENTAL BASELINES RELATIVE TO DREDGE SPOIL DISPOSAL, CAPE COD BAY, 1981", Massachusetts Office of Coastal Zone Management, Boston, MA.
4. Fredette, Thomas J., David A. Nelson, James E. Clausner and Fred J. Anders (1990), "GUIDELINES FOR PHYSICAL AND BIOLOGICAL MONITORING OF AQUATIC DREDGED MATERIAL DISPOSAL SITES", Technical Report D-90-12, US Army Corps of Engineers, Vicksburg, MI.
5. _____, Gary Anderson, Barry S. Payne and John D. Luna (1986), "Biological Monitoring of Open-Water Dredged Material Disposal Sites", in IEE OCEANS '86 CONFERENCE PROCEEDINGS, Washington, DC.
6. _____, (February 12, 1993), Personal Communication.
7. Fish, John Perry, and H. Arnold Carr (1993), "TECHNIQUES FOR: ACOUSTICALLY SURVEYING MARINE RADIOACTIVE AND TOXIC WASTE DISPOSAL SITES", Underwater Search and Survey, Ltd., Cataumet, MA.
8. US Environmental Protection Agency (1992), "FINAL ENVIRONMENTAL IMPACT STATEMENT: DESIGNATION OF AN OCEAN DREDGED MATERIAL DISPOSAL SITE IN MASSACHUSETTS BAY", US Environmental Protection Agency, Region I, Boston, MA.
9. _____ and Department of the Army, US Army Corps of Engineers (1991), "EVALUATION OF DREDGED MATERIAL PROPOSED FOR OCEAN DISPOSAL (TESTING MANUAL)", Washington, DC. (the "Green Book")
10. _____ and US Army Corps of Engineers, New England Division (1989), "GUIDANCE FOR PERFORMING TESTS ON DREDGED MATERIAL TO BE DISPOSED OF IN OPEN WATERS", Waltham, MA (the "NED/EPA New England Protocols").

APPENDIX A.

FORMS

INSPECTOR'S DAILY REPORT OF DISPOSAL BY SCOW

Permittee _____
 Permit/Contract No. _____
 Project _____
 Dredging Contractor _____

Disposal Area _____
 Date _____
 Towboat _____
 Owner _____

Trip No.	Scow No.	Started Place	From Time	Disposal Time	Returned To Place	To Time	Round Trip Time	Trip Dist.	Loran C or Lat/Long Coord.*		Dist./Dir. From Buoy
									Specified	Actual	

Trip No.	No. Pockets		Reason Pocket Not Dumped	Disposal		Weather	Sea Conditions/ Visibility	Scow Load (Cu. Yds.)	Scow Draft
	Loaded	Dumped		Depth	Speed				

Comments:

*Use Loran C values unless unavailable.

Time On	Time Off	Hours on Duty	Reviewed By Permittee's Representative/ Resident Inspector
Total Hours On Duty			

To the Division Engineer, US Army Engineer Division, New England, Waltham, MA:
 I certify that I informed the tug captain of the conditions of the U.S. Army Corps of Engineers permit regarding the distance from the buoy and the speed of scow during the release of the dredged material. I also informed the captain that failure to comply with these conditions would constitute a violation of the permit and would be reported to the Corps. I certify that this report is correct and that I am not an employee of the dredging or towing firm, or the permittee, nor have I been employed by any of them at any time during the past 6 months.

 (Signature of Inspector) (Certification No.)

Print Name Here: _____

LIST OF SPECIES CODES FOR RECORDING SIGHTINGS OF
MARINE MAMMALS AND SEATURTLES

Species Name	Species Code	Status
BLUE WHALE	BLW	
FIN WHALE	FNW	E
HUMPBACK WHALE	HBW	E
MINKE WHALE	MNW	
PILOT WHALE	PLW	
RIGHT WHALE	RTW	E
SEI WHALE	SEW	E
SPERM WHALE	SPW	E
ATLANTIC WHITE-SIDED DOLPHIN	AWD	
BOTTLENOSE DOLPHIN	BND	
COMMON DOLPHIN	CMD	
OTHER ODONTOCETES	OOD	
HARBOR PORPOISE	HBP	
GREY SEAL	GRS	
HARBOR SEAL	HBS	
OTHER PINNIPEDS	OPS	
GREEN SEA TURTLE	GST	E
HAWKSBILL SEA TURTLE	HBT	
LEATHERBACK SEA TURTLE	LBT	E
LOGGERHEAD SEA TURTLE	LGT	T
KEMP'S RIDLEY SEA TURTLE	KRT	E

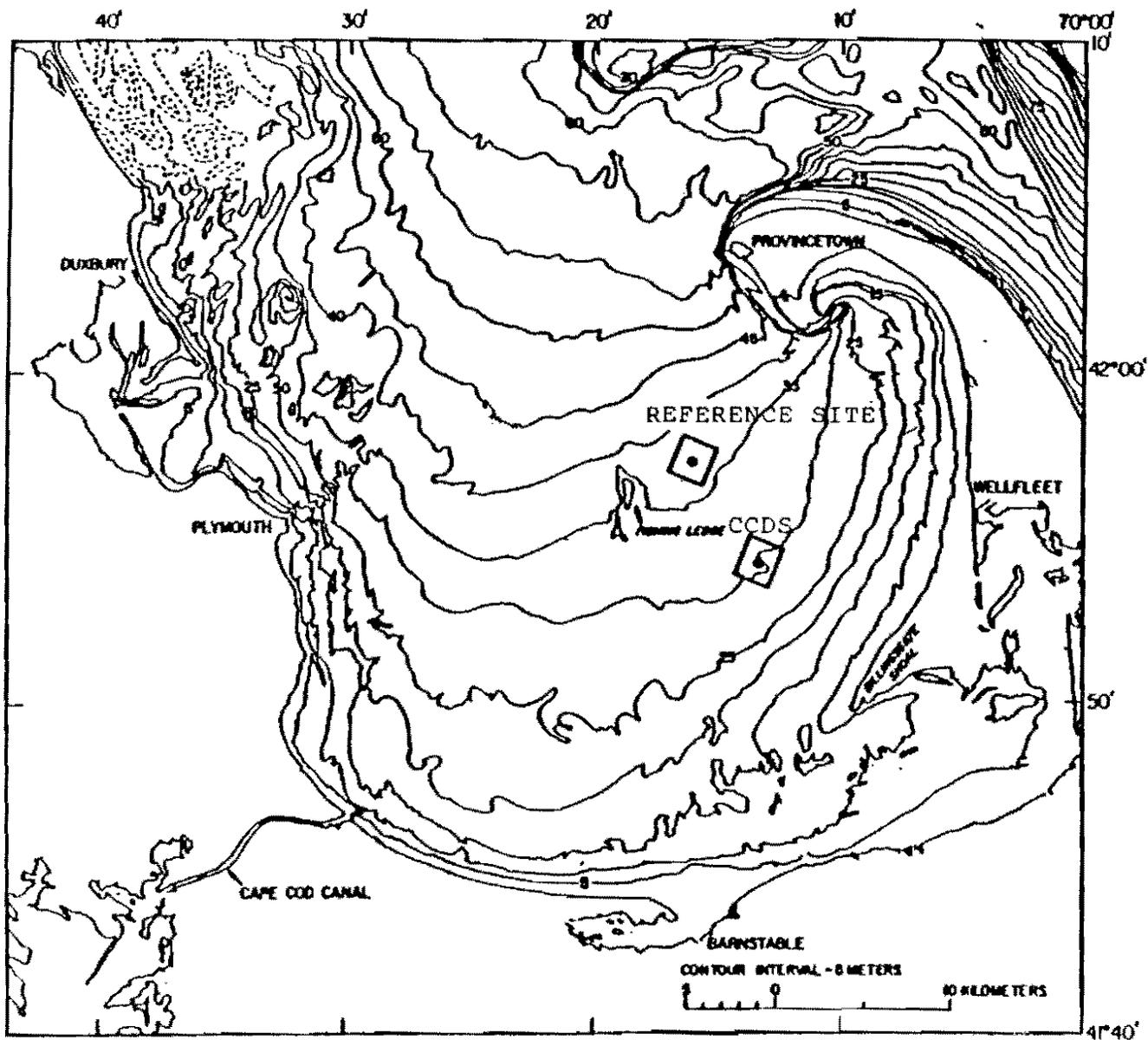


FIGURE 1. CAPE COD DISPOSAL SITE AND REFERENCE LOCATIONS WITHIN CAPE COD BAY.

TELEPHONE OR VERBAL CONVERSATION RECORD

For use of this form see AR 340-15, the proponent agency is The Adjutant General's Office

Nov. 9, 1994
Nov. 2, 1994

SUBJECT OF CONVERSATION

CCBDS

INCOMING CALL

PERSON CALLING	ADDRESS	PHONE NUMBER AND EXTENSION
PERSON CALLED	OFFICE	PHONE NUMBER AND EXTENSION

OUTGOING CALL

PERSON CALLING	OFFICE	PHONE NUMBER AND EXTENSION
M. Stillman	Reg	78152
PERSON CALLED	ADDRESS	PHONE NUMBER AND EXTENSION
Les Lewis	Dem	727-3160 x549

SUMMARY OF CONVERSATION

Responses from Les Lewis Nov. 9, 1994:

Will data, reports, etc. be available as public info?
Available.

T.O.P. - mid-May through Dec for disposal.

ie: No Disposal Dec 31 to May 15?

Mgmt Plan doesn't state suitability/clear.

When did he get only Cat I, II material
fine-grained to be disposed?

That is from secretary certifi on EIR. Should be
in management plan too - beginning section.

Pre-condition surveys: were contaminant levels in
organisms measured? No. They were measured
for EIR. That will be baseline for long-term
monitoring.

TELEPHONE OR VERBAL CONVERSATION RECORD

For use of this form - see AR 340.15, the proponent agency is The Adjutant General's Office

Oct. 19, 1994

SUBJECT OF CONVERSATION

Cape Cod Bay Disposal Site

INCOMING CALL

PERSON CALLING	ADDRESS	PHONE NUMBER AND EXTENSION
PERSON CALLED	OFFICE	PHONE NUMBER AND EXTENSION

OUTGOING CALL

PERSON CALLING	OFFICE	PHONE NUMBER AND EXTENSION
M. Skillman	Reg	
PERSON CALLED	ADDRESS	PHONE NUMBER AND EXTENSION
Mary Colligan	NMFS - Gloucester	508 281 9300

SUMMARY OF CONVERSATION

She has been somewhat involved in this topic - so has John Kinkaid. She believes sec. 7 issues remain unresolved. NMFS would like a biological assessment for use of the site so they don't have to do one for each case.

Does EIR info provide enough info to do that? She doesn't know. Mary will get copy of EIR to endangered species group to review. It may just need some additional info but she doesn't know.

They would not object to including projects in Cat. II of PGP with : Sec. 7 consultation case-by-case
 or Sec. 7 consultation done for all use.

TELEPHONE OR VERBAL CONVERSATION RECORD

For use of this form - see AR 340-13, the procuring agency is The Adjutant General's Office

10-31-94

SUBJECT OF CONVERSATION

MA PGP - Condition 19 Spawning Areas

INCOMING CALL

PERSON CALLING	ADDRESS	PHONE NUMBER AND EXTENSION
Kyla Bennett	EPA	
PERSON CALLED	OFFICE	PHONE NUMBER AND EXTENSION
M. Stillman	Reg Div.	

OUTGOING CALL

PERSON CALLING	OFFICE	PHONE NUMBER AND EXTENSION
PERSON CALLED	ADDRESS	PHONE NUMBER AND EXTENSION

SUMMARY OF CONVERSATION

Condition 19 should be all spawning areas, of Condition 19 should be fish and shellfish spawning, and a separate condition should be added to protect vernal pools. (amphibians and reptiles).

About 650 are certified V.P. in Mass. Another 100+ are on the waiting list - backlog. There are only 5 or less staff working on this. Some Cons. Comms are increasing in awareness/review of V.P.s.

There are many in the state that are not certified.

ID from aerial photographs - 75% accurate.

Are they waters of the U.S.? Most are part of a Water of U.S. system - either an intermittent drainage system, or within a wetland. May be some that are isolated and may not be waters of U.S. However they are very important for migratory birds - more important than larger surface waters. eg. Wood ducks, ...

Ed. R. reviewing other PGP changes.

DA FORM 751
1 APR 66

REPLACES EDITION OF 1 FEB 66 WHICH WILL BE USED.

TELEPHONE OR VERBAL CONVERSATION RECORD

For use of this form, see AR 340-15. The proponent agency is The Adjutant General's Office.

Oct. 19, 1994

SUBJECT OF CONVERSATION

Cape Cod Bay Disposal Site

INCOMING CALL

PERSON CALLING	ADDRESS	PHONE NUMBER AND EXTENSION
PERSON CALLED	OFFICE	PHONE NUMBER AND EXTENSION

OUTGOING CALL

PERSON CALLING	OFFICE	PHONE NUMBER AND EXTENSION
M. Stillman	Reg	
PERSON CALLED	ADDRESS	PHONE NUMBER AND EXTENSION
Les Lewis	MA DEM	727-3160 x549

SUMMARY OF CONVERSATION

March '93 Management Plan is most recent.

Pre-disposal surveys were done this past spring and report of surveys was completed in August. The committee has been formed. Buoy has been placed at the site as of last Friday.

(Post-disposal surveys will be required after the first disposal operation and 1 yr after that.)

Sec 7 concerns were discussed with DMFS - resulted in a ^{to.d.f.} when site can be used, limits on type of material - Clean - Cat. I and Cat. II a fine-grained sediment - and requirements for a marine mammal observer to be on-board all trips.

Sand: if clean - use for beach nourishment.

A one-time waiver was issued for Wellfleet.

Biological assessment was done for EIR. to cover benthic biology and endangered species.

Review: no change in review procedures - same as for any dredging project. Projects consistent w/ terms in management plan can go to CCBDs.

DA FORM 751
1 APR 66

REPLACES EDITION OF 1 FEB 66 WHICH WILL BE USED.

TELEPHONE OR VERBAL CONVERSATION RECORD

For use of this form see AR 340-15, the proponent agency is The Adjutant General's Office.

Oct. 19, 1994

SUBJECT OF CONVERSATION

Cape Cod Bay Disposal Site

INCOMING CALL

PERSON CALLING	ADDRESS	PHONE NUMBER AND EXTENSION

PERSON CALLED	OFFICE	PHONE NUMBER AND EXTENSION

OUTGOING CALL

PERSON CALLING	OFFICE	PHONE NUMBER AND EXTENSION
M. Stillman	Reg	78152

PERSON CALLED	ADDRESS	PHONE NUMBER AND EXTENSION
Laurie Silva	DMFS - Gloucester	508-281-9291

SUMMARY OF CONVERSATION

DMFS would like a biological assessment considering use of the Cape Cod Bay Disposal site as was done for MBDS. Right whale + critical habitat is primary concern, but all the listed species occur in Cape Cod Bay as well. Increased traffic to the site alone could have an impact.

A t.o.y. restriction could take care of much of the concern. They would like more info though on the type of material / types of projects that would be covered.

Biol. assessments:

The MBDS assessment is a good example. How long that procedure takes depends on the projects to be considered.

e.g. Clean vs. unclear material makes a big difference.

It is likely that with a generic t.o.y. restriction and specification of contaminants to be acceptable, something could be worked out. Generic t.o.y. likely to be prohibitory from March 1 - Nov. 1.

Dredging Activities Permitting: Predisposal Analysis of Dredged Material

Although the process of obtaining a dredging permit is beyond the scope of this EIR, a brief discussion of some of the criteria relative to obtaining a dredging permit is given, particularly as they relate to the management of the disposal site. An excellent summary of the criteria regulating both dredging and dredged-material disposal in the coastal zone of Massachusetts is given by Barr (1987).

21

32

In its regulation of dredging (314 CMR 9.00) the Massachusetts Department of Water Pollution Control (DWPC) requires the chemical and physical analysis of representative samples of proposed dredged material for certain components: grain size, percent volatile solids, percent oil and grease [or total petroleum hydrocarbons (TPH)], cadmium (Cd), chromium (Cr), copper (Cu), lead (Pb), and mercury (Hg). Additional parameters will be tested in dredged material proposed for disposal at Site B: arsenic (As), nickel (Ni), Zinc (Zn), polychlorinated biphenyls (PCB), total organic carbon (TOC), selected polynuclear aromatic hydrocarbons (PAH), and total petroleum hydrocarbons (TPH). This does not preclude testing for any other contaminants of concern such as pesticides, dioxins, and organohalogenes. These tests are prohibitively expensive and are required when warranted, but are not usually routine. The Guidance for Performing Tests on Dredged Material To Be Disposed of in Open Waters, prepared by EPA Region I and the New England Division of the United States Army Corps of Engineers dated May 1989 is the recommended testing protocol which includes amphipod bioassay testing and 28-day bioaccumulation tests.

In terms of chemical constituents, it is recommended that dredged materials destined for ocean disposal not exceed Category I, as established by DWPC (Table 47). The chemicals of concern are the eight metals, PCBs, PAHs, TPHs, and project-specific contaminants of concern. Category levels for PAHs and TPHs will be developed by the Massachusetts Executive Office of Environmental Affairs. Additional testing or special restrictions may be required prior to permitting the disposal of sediments with chemical concentrations that are within the levels specified in DWPC Category II, particularly for PCBs, PAHs, and TPHs. Such tests would be required to demonstrate that the material caused no violation of water quality standards or no adverse effect on sensitive and appropriate test species, depending on the contaminant of concern. Category III sediments (exceeding chemical concentrations in Category II; see Table 47) will not be allowed under the present guidelines. It is anticipated that sediment-level criteria will change and will be reflected in these criteria.

Sediments with a grain-size distribution ranging from 10% to 100% silt/clay (DWPC Types A, B, or C) may be appropriate for disposal at the site insofar as they remain at the site (see Monitoring section below). Site B has been chosen because it appears to be a depositional area with grain sizes varying from sandy muds in the southeast to more fine-grained muds in the northwest (see Figure 39).

Grain-size analyses are considered important both in terms of determining impact upon the disposal site and in determining the rate at which the particles will settle through the water column. In terms of site impact, two points should be considered: (1) the grain size should not be markedly different from that at the host site and (2) the material should not be transported away from the disposal site.

From Table 47, it can be seen that the trace-element concentrations in sediments from Site B and Duxbury Harbor are at or within the Categories I and II limits. Sediments from these two locations are also characterized by Types A, B, and C grain-size distributions. The grain sizes at Site B (Figure 39) vary considerably, from sandy muds in the southeast to fine-grained muds (with little sand) in the northwest. Thus, Site B appears capable of accepting Types A, B, or C sediments, and Duxbury Harbor sediments (the only harbor for which we have sufficient data) have chemical compositions that are within Category I.

Management

The disposal of dredged material at Site B assumes permitting harbor dredging according to State and Federal regulations. Included with the disposal requirements are the transport to and disposal of the material at the designated site. It is important that the disposal site be accurately identified and that an observer, black box, or equivalent be onboard the barge/hopper dredge that transports the dredged material to the site and disposes it. This observer, black box, or equivalent will verify that all the material is properly disposed at the designated site and will also determine the absence (or presence) of right whales in the area.

Transport: During transport of the dredged material to the designated disposal site, it is important that the observer, black box, or equivalent verify that there is no short dumping and that the disposal criteria are met.

Disposal: A seasonal window is recommended for the disposal of dredged material to minimize the impact on the right whale (particularly for nursing mothers). The right whale normally is in Cape Cod Bay from January through May; during these months, no disposal should be attempted. The best time to dredge harbors and dispose of the dredged material probably is late summer and fall (September - December). Rarely has the right whale been observed in the area during these months. This period also coincides with a time when most boats and moorings have been removed from the harbors for the winter, thereby facilitating the harbor dredging.

TABLE 47. SUMMARY OF CRITERIA FOR CATEGORIES I AND II SEDIMENTS, AS WELL AS SEDIMENT TYPES^a A, B, AND C AS SPECIFIED BY THE DEPARTMENT OF ENVIRONMENTAL MANAGEMENT AND THE DEPARTMENT OF WATER POLLUTION CONTROL AND MEAN CONCENTRATIONS OF VARIOUS TRACE ELEMENTS AND COMPOUNDS AT SITE B-1 (THE HISTORICAL WELLFLEET DISPOSAL SITE; SEE TABLE 7) AND FROM DUXBURY HARBOR (SEE TABLE 46)

W6

233

Analyte	Category I (ppm)	Category II (ppm)	Site B-1 (ppm)	Duxbury Harbor (ppm)
Arsenic	<10	10-20	15	2.7
Cadmium	<5	5-10	0.9	<2
Chromium	<100	100-300	56	25
Copper	<200	200-400	24	14
Lead	<100	100-200	49	20
Mercury	<0.5	0.5-1.5	0.6	0.8
Nickel	<50	50-100	25	<24
Zinc	<200	200-400	86	58
PCBs ^b	<0.5	0.5-1.0	NA ^c	NA ^c

^aComposition of silt/clay: Type A: <60. Type B: 60%-90%. Type C: >90%
Site B-1: 59.5%. Duxbury Harbor: 13%-90%.

^bPCB: Polychlorinated biphenyl

^cNA: Not available.

To ensure that disruption to the benthic environment is localized, it is important to mark and identify the site with a taut-line buoy or other device, accurately located by navigation (preferably Loran-C and/or range-bearing radar), so that the site can be relocated should the buoy no longer be present. Shore-based navigation is more accurate than either Loran-C or radar (i.e., 2-5 m as compared to 20-50 m), but establishing and maintaining shore-based navigation stations may involve more effort and cost than the increased navigational accuracy is worth. All disposal should be done within 250 m radius of the site and within reasonable location of the buoy, although this will vary, depending on the amount of the disposed material.

6
2015

Taking into account the character of the disposal site and the environmental constraints and concerns, it is important that the disposal process itself be carefully monitored. The dredging permit should include recommended rates and modes of dredged-material disposal to minimize the extent of seafloor area that could be impacted by the disposal operation. The holding capacity of the site should be determined, both for a single disposal operation and for long-term disposal. Assuming the area over which material is disposed to be 200 m in diameter and the volume disposed to be 400,000 m³, the disposal site should shoal by somewhat more than 1 m if the dredged material were deposited uniformly and contained. Similarly, if all of Site B (1 square mile) eventually were to be utilized for the disposal of the 540,000 cu yd of sediment estimated to be dredged by 1996 (see Table 1), the average shoaling would be less than 2 m. In actual fact, of course, local shoaling would be considerably more than this. Given a mound of 2 m and a radius of 250 m, the disposal site will accept between 500,000 and 600,000 cu yd of dredged material.

Monitoring

The pre- and post-disposal environmental monitoring at the selected disposal site will provide data for assessing the effectiveness of management efforts to mitigate potential impact at the site. Issues of concern are the impact of dumping on the physical/chemical environment, the impact on the benthic fauna and near-bottom and bottom fishes as well as endangered and threatened species. The monitoring programs should identify both short- and long-term impacts and determine whether the disposed material is contained within the designated site.

Because large disposal operations are likely to have far greater impact upon the site than smaller disposal operations, it is recommended that most of the following monitoring activities be restricted to at least one operation in which more than 50,000 cu yd is disposed. Some monitoring measurements (e.g., light transmission at the site prior to disposal) can be made directly from the barge, but a small boat is recommended for most of the measurements, particularly where mobility is needed. The responsibility for costs associated with taking these measurements will be determined by Massachusetts Executive Office of Environmental Affairs, Department of Environmental Management.

Monitoring the Site Prior to Disposal

Given the detailed study of Site B in this EIR, most predisposal analysis of the site has been completed. However, several aspects should be analyzed further prior to dredged-material disposal.

1. In accordance with specifications dictated by the approved scope of work, chemical analyses of samples for this EIR were performed for only a single cruise. No attempt was made to look at small-scale spatial variation in chemical composition. Analytical results presented in this report, plus visual observations made during various cruises, suggest that chemical contamination at and near the site show considerable variation. Thus, it is important that a number of stations around the disposal site be sampled, and that replicate samples be taken and analyzed at each of these stations before disposal. At least one station should be at Site C and others outside the immediate area station against which to compare post depositional changes (if any).

2. A detailed side-scan sonar and 3.5-kHz boomer survey can document the change in bottom morphology and bathymetry after the disposal of the dredged material. The seismic part of this study will delineate not only bathymetry but also the thickness of the dredged material over the buried seafloor. Any change in the shape, thickness, and surface morphology of this disposed material can then be monitored by periodic resurveys (after disposal).

3. Prior to disposal, light-transmission measurements of the water column should be made to ascertain background levels of suspended material. These measurements are necessary to determine how long it takes for the water column around the disposal site to return to its initial state after a disposal operation.

Light-transmission measurements in the water column (much like those shown in Figures B-45 through B-49) will give an estimate of suspended-matter concentration. By measuring light-transmission levels just after disposal and then at predetermined subsequent intervals, one can determine the time required for the material to settle out. This is important when isolating the times during which sediment in suspension might affect ambient plankton or (if present) feeding whales. However, since one of the criteria for disposal is the absence of whales, feeding whales should not be impacted. The pattern of transmissometer stations should coincide with the dispersal pattern anticipated after disposal (see below).

It is recommended that a standard light transmissometer be used, one that can be lowered by hand ~~from~~ from a small boat. Ondeck readout of the data is preferred. Conversely, a recording light meter can be deployed at a moored tripod at one or more locations to give a more continuous record of the suspended matter regime at or near the disposal site. Deployment of such a mooring, however, is more expensive than using a standard light transmissometer and would not allow the spatial resolution that is possible from a boat.

4. A baseline REMOTS (Remote Ecological Monitoring of the Seafloor) survey should be carried out at predetermined locations (stations) within and just adjacent to the disposal site to document the biological community, depth of the oxic zone, and level of dissolved oxygen. Field techniques and interpretation would closely follow those used in the preparation of this report.

Monitoring During Disposal

It is important that the actual disposal of the dredged material be monitored. This monitoring should include an observer (or, alternatively, a "black box" in accordance with recent COE initiatives) on the barge/hopper dredge to ensure that all material is deposited within the physical boundaries of the disposal site and the continued absence of whales from the disposal site.

When dumped into the water, most of the spoil will settle *en masse*, such that it will reach the bottom (i.e., 31 m if at Site B) within minutes of disposal. Some fraction of the sediment, however, will settle as individual particles or small aggregates; it is these particles that will give a longer lasting turbidity to the water. As a first estimate of the settling times of these particles, Stokes settling equation indicates that it will take about one-half hour for an average particle 0.125 mm in diameter (fine sand) to settle from the surface to a depth of 31 m. Finer material within the dredged material would take longer to settle, but even coarse silt particles should settle within 10 h (Table 48). Settlement could take longer when the weather is stormy and water turbulence keeps the material in suspension, or shorter if biological aggregation coagulates particles into larger sizes that fall correspondingly faster. In either case, it is estimated that most or all of the sediment dredged from harbors surrounding Cape Cod Bay should settle within several hours after disposal at Site B.

Several transects of light-transmission profiles should be made by using an optical transmissometer. The disposal site can serve as the axis of the sampling grid. At least two transects should be made downcurrent (presumably north; see Figure B-58) and one transect upcurrent (presumably south). However, shipboard analysis of these profiles may indicate that other profiles should be taken to monitor more accurately the direction of any movement of the plume. Given an average current speed of 15-20 cm/s and, assuming a normal tidal ellipse, there should be no marked offset of the sediment plume from the site unless the sediment contains a substantial amount of fine material (which could take more than several hours to settle).

Light-transmission profiles should be taken until the suspended particle concentration in the water column reaches or approaches background levels. Sampling can be done at telescoping times: 5, 15, 30 min, 1, 2, and 4 h after disposal. Depending on the trend of light transmission during this time interval, it may be necessary to take an 8-h profile and perhaps another profile the next day.

TABLE 48. ESTIMATED DREDGED MATERIAL VOLUME FROM FEDERAL MAINTENANCE PROJECTS BETWEEN WEYMOUTH FORE RIVER AND THE CAPE COD CANAL, THROUGH 1996. ACTUAL VALUES ARE SUBJECT TO WIDE VARIATION.

Project	Volume of Dredged Material (cu yd)
Weymouth Fore River	50,000
Hingham	
Cohasset Harbor	40,000
Scituate Harbor	75,000
Green Harbor	50,000
Duxbury	100,000
Kingston	
Plymouth	75,000
Cape Cod Canal (east end)	50,000
Wellfleet	<u>100,000</u>
TOTAL	540,000

Postdisposal Monitoring

The site should be monitored after disposal to determine short-term (days to weeks after the disposal) and long-term (months to years) effects. To repeat points discussed earlier in this chapter, these would include monitoring the impact on whales if deemed appropriate, impact on benthos/sediments, containment of the sediment within the disposal area, impact on water quality, etc.

1. The chemical analysis of sediments at stations around the disposal site should be conducted for comparison to results obtained during predisposal analyses.

2. If sediment is redistributed within Site B or moves from the site, it most likely will happen during winter storms. Therefore, it is recommended that when the contaminants have been determined, sediments at the site be analyzed for grain size to monitor any temporal/spatial change in texture, or one indication of sediment migration. Another way is to rerun side-scan sonar and 3.5-kHz boomer profiles 1 year after the cessation of disposal operations. The location of these profiles should coincide as closely as possible with the location of those run before the disposal. Differences in morphology or sediment thickness could indicate the movement of sediment away from the site (i.e., noncontainment) or consolidation.

3. When the dredged material is disposed properly, there should be no negative impact on the right whales in this area; the whales will not be in the area when the material is disposed, and light-transmissometer measurements will delineate the time required for the waters at the site to return to ambient conditions (generally assumed to be hours rather than days; see above).

4. The REMOTS stations should be reoccupied within a few weeks after disposal to identify any short-term effects and again 1 year after disposal or prior to another major disposal activity to determine any long-term effects. Dissolved oxygen should also be measured by the REMOTS. This will give an indication of biological impact and recovery at the site.

5. Five years after initiation of the dredging activities, the disposal site should be inspected for recolonization of indigenous species and bulk sediment analysis should be conducted to detect any effects on the ecosystem.

Summary

This section is a proposed management and monitoring plan for Site B, and contain a number of recommendations that should be followed for effective management of the site.

1. Disposal of dredged material should be carried out only during months in which the right whale is normally absent from the area; this period extends approximately from June through December, with the latter part of this "window" considered best. In any case, before disposal can begin at the designated site, the absence of the right whale from the area should be confirmed, preferably by scientists from the New England Aquarium or The Center for Coastal Studies.

2. An observer, black box, or equivalent must be on the barge/hopper dredge as it transports the dredged material to the disposal site. The observer must confirm that no material is short-dumped and that all material is dumped at the site. The observer also should be aware of any environmental condition or event (e.g., the sudden presence of right whales) that would preclude the continuation of disposal operations.

3. The center of the disposal site should be identified by a tautline-buoy or equivalent and positioned by Loran-C and/or radar.

4. Because of the expense involved, it probably will be feasible only to conduct a complete environmental analysis of the site before, during, and after the first disposal of a large volume (say, greater than 50,000 cu yd). However, it is important to monitor the following parameters:

- a. Clarity of the water before and after disposal to determine the time for settlement.
- b. Morphology and bathymetry of the seafloor before and after disposal to delineate the thickness and area over which the disposed material has accumulated on the bottom repeated survey 1 year after disposal is recommended to delineate any non-containment (i.e., transport) of the dredged material.
- c. Given the fact that the sediment disposed at the site will lie within the clean-sediment guidelines of Category I and/or II, both long-term and short-term biological and chemical (i.e., dissolved oxygen) impacts may be documented by reoccupying REMOTS stations at specified intervals.
- d. A management/monitoring task force chaired by the CZM and composed of DEM, DEP and three representatives from the Executive Office of Environmental Affairs/Technical Advisory Group, or other scientific advisory committee or the scientific community at large shall recommend and approve sampling design, review monitoring data, and prepare recommendations for additional actions to the Secretary of Environmental Affairs.

DRAFT



DEPARTMENT OF THE ARMY
NEW ENGLAND DIVISION, CORPS OF ENGINEERS
424 TRAPELO ROAD
WALTHAM, MASSACHUSETTS 02254-9149

REPLY TO
ATTENTION OF

October 18, 1994

CENED-OD-R
Regulatory Division
199402489

Mr. Allen E. Peterson Jr.
Acting Regional Director
National Marine Fisheries Service
One Blackburn Drive
Gloucester, MA 01930

Dear Mr. Peterson:

A recent Department of the Army permit application was submitted by the Hyannis Steamship Authority to dredge approximately 18,000 cys. of clean material and dispose of the material at the Cape Cod Disposal Site (CCBDS) in Cape Cod Bay. The proposed work is in the Hyannis Inner Harbor, Hyannis Massachusetts (see attached locus plan). During a recent telephone conversation with Mr. Beach of your staff we discussed the Federally listed threatened or endangered species and its critical habitat present in the project discharge area. This letter hereby initiates informal consultation with your agency pursuant to Section 7 of the Endangered Species Act.

The proposed project is as follows:

To mechanically dredge approximately 18,000 cys. of clean sand from in front of the proposed Hyannis ferry berth area, place the material in barges for disposal at the CCBDS and expand the berth structures.

The Federally listed threatened or endangered species which may be present at the CCBDS site are: northern right whale (including critical habitat), humpback whale, finback whale, leatherback sea turtle, loggerhead sea turtle and kemp's riddley turtle. The proposed project has the potential to cause the following impact to the species/habitat:

The marine mammals/reptiles, during feeding and breeding activities, may be impacted by the discharge of dredge material or by the barge traveling to and from the CCBDS.

We understand that endangered turtles may occasionally use the near-shore area. This is not likely to be a problem in the dredge area because the applicant will be using a mechanical dredge to perform the work. Mechanical dredges are not known to impact turtles.

-2-

The Corps of Engineers has determined that the following measure will be implemented through a special condition in the permit to avoid impacts:

Disposal, at the Cape Cod Bay Disposal Site, shall not occur between December 31 and September 15 unless an extension is coordinated with the various resource agencies and granted.

Based on the above information, the Corps has determined that the above referenced project is not likely to affect the whales, turtles or other endangered species or their critical habitat. We request that the National Marine Fisheries Service concur with this determination.

Please have your staff contact Mr. Thomas C. Bruha at 617-647-8058 if further information is required.

Sincerely,

William F. Lawless, P.E.
Chief, Regulatory Division
Operations Directorate

Enclosure

Copy Furnished:

Mr. John Bable
Earth Tech
196 Baker Avenue
Concord, Massachusetts 01742



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
NEW ENGLAND DIVISION, CORPS OF ENGINEERS
424 TRAPELO ROAD
WALTHAM, MASSACHUSETTS 02254-9149

November 16, 1994

Regulatory Division
CENED-OD-R-1993-01040

Massachusetts DEP
Division of Water Pollution Control
Attn: John Higgins
1 Winter Street
Boston, Massachusetts 02108

Dear Mr. Higgins:

This is in reference to Section 401 Water Quality Certification for reissuance of the Massachusetts Programmatic General Permit (PGP). We have recently extended the current PGP to December 31, 1994. A copy of the extension and the public notice is attached.

The water quality certification review period for reissuance of the PGP started with our written request dated September 12, 1994. The 60-day review period ends November 11, 1994. Because we have extended the current PGP to December 31, 1994, we are hereby granting an extension to the water quality certification review period to December 9, 1994. We would like to request certification and the revised text for the 401 requirements by that date so that we can make the text changes and issue the revised PGP with a public notice prior to its effective date of January 1, 1995.

A current, revised draft PGP is attached for your information. Changes from the draft provided with the certification request have been noted.

We are finalizing coordination with the federal resource agencies at this time and will let you know of any further changes as soon as they are made. Final issues to be resolved include coordination with the National Park Service on Wild and Scenic Rivers, and various recommendations by the federal agencies to make either the terms or conditions of the PGP more restrictive. None of the changes being reviewed would make the PGP less restrictive than the attached draft.

If you have any questions, please contact Monica Stillman at
(617) 647-8152.

Sincerely,

William F. Lawless
Chief, Regulatory Division
Operations Directorate

Enclosure

Copy Furnished:
MA DEP Division of Wetlands and Waterways
Attn: Carl Dierker
1 Winter Street
Boston, Massachusetts 02108

11/3
PM
CS-
BPC-

MFR
DRAFT
DATED
11-14-94
A.Haebel.



REPLY TO
ATTENTION OF

CENED-OD-R
1993-01040

DEPARTMENT OF THE ARMY
NEW ENGLAND DIVISION, CORPS OF ENGINEERS
424 TRAPELO ROAD
WALTHAM, MASSACHUSETTS 02254-9149

Effective Date: October 31, 1994
Expiration Date: December 31, 1994

AMENDMENT TO
DEPARTMENT OF THE ARMY PROGRAMMATIC GENERAL PERMIT
COMMONWEALTH OF MASSACHUSETTS

The New England Division of the U.S. Army Corps of Engineers hereby amends the Massachusetts Programmatic General Permit (PGP) issued August 24, 1993, as follows:

The current expiration date of the PGP shall be extended to December 31, 1994.

Christine Godfrey

WFL

William F. Lawless, P.E.
Chief, Regulatory Division
Operations Directorate

TELEPHONE OR VERBAL CONVERSATION RECORD

For use of this form see AR 340-11. The proponent agency is The Adjutant General's Office.

Nov. 9, 1994

SUBJECT OF CONVERSATION

Airport Tree Clearing

INCOMING CALL

PERSON CALLING	ADDRESS	PHONE NUMBER AND EXTENSION
PERSON CALLED	OFFICE	PHONE NUMBER AND EXTENSION

OUTGOING CALL

PERSON CALLING	OFFICE	PHONE NUMBER AND EXTENSION
M. Stillman	Reg	78152
PERSON CALLED	ADDRESS	PHONE NUMBER AND EXTENSION
Armand Dufresne	MA Aeronautics	617-973-8890

SUMMARY OF CONVERSATION

I left a message - Karen and I are free Nov. 30
 or Dec. 1~~st~~. I will talk to Chris E. next week.
 Let us know if a date/time are set.

TELEPHONE OR VERBAL CONVERSATION RECORD

For use of this form see AR 340-15, the proponent agency is The Adjutant General's Office.

Nov. 4, 1994

SUBJECT OF CONVERSATION

Airport Tree Clearing

INCOMING CALL

PERSON CALLING <i>Armand Du Fresne</i>	ADDRESS <i>MA Aeronautics</i>	PHONE NUMBER AND EXTENSION <i>617-973-8890</i>
---	----------------------------------	---

PERSON CALLED <i>M. Stillman</i>	OFFICE <i>Reg B</i>	PHONE NUMBER AND EXTENSION <i>78152</i>
-------------------------------------	------------------------	--

OUTGOING CALL

PERSON CALLING	OFFICE	PHONE NUMBER AND EXTENSION
----------------	--------	----------------------------

PERSON CALLED	ADDRESS	PHONE NUMBER AND EXTENSION
---------------	---------	----------------------------

SUMMARY OF CONVERSATION

Would like to meet with MA DEP and Corps - Planning large scale evaluation of clearing needs at airports in MA. Will be mapping airports, visual obstructions, potential wetland impacts. They want to know what to expect in terms of permitting review requirements - time and cost.

Goal is to develop long-term plans for maintaining clearances required at all airports.

Chris B. +/or Karen G. at Corps. Dates: target Nov. 30 or Dec. 1
Tom Rivers - Commissioner at DEP.

- 1) Permitting: I will complete review of BEIR over next week also. to set a "special" threshold we would have to verify impacts would be minimal for every potential case. Not likely. We are resisting many requests for exceptions to 1 acre threshold for different types of projects. Plus: FGEIR ≠ limited project. Final conclusions/recommendations will depend on complete evaluation of FGEIR/LT.
- 2) What issues will Corps be concerned with if/when these projects come in for review? Essentially pre-appl. type meeting

Monica -

Here are our basic comments. These are concepts, not exact wording -- we'll leave that up to you. We would be happy to get together to discuss any of this.

1. (Condition 9) Projects located within Corps jurisdiction (includes adjacent wetlands per our discussion) on a designated W&S segment or an official study segment while in active study status shall not be eligible for the PGP.
2. Encourage pre-consultation w/ NPS by applicants. Provide address & phone.
3. List actual segments designated or under active study.

Screening procedures for PGP applications upstream or downstream of a designated segment.

Our initial proposal would be to utilize a screening procedure similar to the one proposed in your wording, but allowing for 30 days for the NPS to determine whether an individual permit [REDACTED] (the additional information generated through the individual permit process would enable us to determine whether or not a "direct and adverse impact" would result).

The key issue in developing such a screening process is to establish reasonable geographic boundaries within which the procedure applies. We propose using the three part screening process outlined below, with application to the following areas: 1) first order tributaries of the designated segments; 2) the mainstem above or below the designated segment.

- > no non-reporting (category I) PGP's
- > NPS screening of Category II PGP's to determine whether an individual permit is necessary
- > Encourage pre-consultations

This general policy could be modified by mutual agreement on a river-by-river basis if necessary and appropriate.

8. Endangered Species. No activity is authorized under this general permit which is likely to jeopardize the continued existence of 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 might be affected or is in the vicinity of the project and shall not begin work until notified by the district engineer that the requirements of the Endangered Species Act 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 (addresses and current Massachusetts list attached).

9. Wild and Scenic Rivers. No activity is authorized under ~~Category I of~~ this general permit that occurs in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a study river for possible inclusion in the system, while the river is in an official study status. ~~Current rivers that this applies to in Massachusetts are listed on page 9. No activity in these waterways shall be authorized under Category II of this general permit if it will have a direct and adverse effect on the values for which such river was established. The Corps will coordinate with the National Park Service for a determination of direct and adverse effect for projects to be screened under Category II of this general permit.~~

10. Federal Navigation Project. Any structure or work that extends closer to the horizontal limits of any Corps' navigation project than a distance of three times the project's authorized depth (see attached map for locations of these projects) shall be subject to removal at the owner's expense prior to any future Corps' dredging or the performance of periodic hydrographic surveys.

11. 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.

12. 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.

MINIMIZATION OF ENVIRONMENTAL IMPACTS:

13. Minimization. Discharges of dredged or fill material into waters of the United States shall be avoided and minimized to the maximum extent practicable.

14. Work in Wetlands. Heavy equipment working in wetlands shall be avoided if possible, and if required shall be placed on mats to minimize soil and vegetation disturbance.

15. Temporary Fill. Temporary fill in waters and wetlands authorized by this general permit (e.g. access roads, cofferdams) shall be properly stabilized during use to prevent erosion. Temporary fill in wetlands shall be placed on geotextile fabric laid on existing

FARMINGTON PLAN

ACTION PROGRAM

Key Actions

Federal regulation of stream alterations: *The Army Corps of Engineers will implement Sec. 404 of the Clean Water Act, which requires federal approval for any project that would discharge dredged or fill material into a river or wetland.*

Regulations governing the Army Corps of Engineers' Nationwide Permit Program (Federal Register, November 22, 1991) require individual rather than nationwide permits for all proposed projects covered by Section 404 of the Clean Water Act that are "in a component of the National Wild and Scenic Rivers System." In accordance with these regulations and the Wild and Scenic Rivers Act, the Corps will, in its review of individual permit applications proposed on the segment, specifically consider comments from the NPS regarding consistency of proposed projects with the standards set forth in this plan. However, it would not be appropriate for the NPS, or the FRCC, to take an active role in all Section 404 permitting actions in the basin. The Corps and the NPS will work cooperatively to develop a coordination/screening procedure for projects authorized under a nationwide or regional permit that are beyond the immediate segment but that could adversely affect it.

State water quality certification: *The DEP will implement the water quality certification requirements of Sec. 401 of the Clean Water Act for any project affecting the segment's channel, banks, or adjacent wetlands that requires a Clean Water Act discharge permit.*

This responsibility is described in the discussion of DEP's implementation of state and federal water pollution control statutes under Water Quality - Key Actions.

Local land use regulation: *The riverfront towns will implement and enforce existing land use regulations that protect the river's channel, banks, and adjacent wetlands.*

The natural appearance and function of the river's channel, banks, and adjacent wetlands receive strong protection through several local land use regulations. The most important include the River Protection Overlay Districts, floodplain regulations, and wetlands regulations. These are discussed in greater detail under Land Management.

T H F N A T I O N A L P A R K S E R V I C E

North Atlantic Region

15 STATE STREET
BOSTON, MA 02109
617.223.5131
FAX 617.223.5172

FAX

DATE

11/2/94

TO

Monica Stillman

PAGES TO FOLLOW

3

FAX #

647-8303

TELEPHONE #

FROM

Jamie Fosburg
National Park Service

COMMENTS

Thanks Monica. I'll
call to check in on
Thursday or Friday



DEPARTMENT OF THE ARMY
NEW ENGLAND DIVISION, CORPS OF ENGINEERS
424 TRAPELO ROAD
WALTHAM, MASSACHUSETTS 02254-9149

REPLY TO
ATTENTION OF

November 16, 1994

Regulatory Division
CENED-OD-R-1993-01040

Coastal Zone Management
Attn: Peg Brady, Director
100 Cambridge Street
Boston, Massachusetts 02202

Dear Ms. Brady:

This is in reference to Coastal Zone Management (CZM) consistency concurrence for reissuance of the Massachusetts Programmatic General Permit (PGP). We have recently extended the current PGP to December 31, 1994. A copy of the extension and the public notice is attached.

The CZM consistency concurrence review period for reissuance of the PGP started with our written request dated September 12, 1994. The 45-day review period ended October 27, 1994. Because we have extended the current PGP to December 31, 1994, we are hereby granting an extension to the CZM consistency concurrence review period to December 9, 1994. We would like to request concurrence and any text changes pertaining to CZM consistency by that date so that we can make the text changes and issue the revised PGP with a public notice prior to its effective date of January 1, 1995.

A current, revised draft PGP is attached for your information. Changes from the draft provided with the consistency concurrence request have been noted.

We are finalizing coordination with the federal resource agencies at this time and will let you know of any further changes as soon as they are made. Final issues to be resolved include coordination with the National Park Service on Wild and Scenic Rivers, and various recommendations by the federal agencies to make either the terms or conditions of the PGP more restrictive. None of the changes being reviewed would make the PGP less restrictive than the attached draft.

If you have any questions, please contact Monica Stillman at
(617) 647-8152.

Sincerely,

William F. Lawless
Chief, Regulatory Division
Operations Directorate

Enclosure

njs
PWH
(10)
BR (1)

MFR:
DRAFT
Dated
11-14-94
attached.



DEPARTMENT OF THE ARMY
NEW ENGLAND DIVISION, CORPS OF ENGINEERS
424 TRAPELO ROAD
WALTHAM, MASSACHUSETTS 02254-9149

REPLY TO
ATTENTION OF

CENED-OD-R
1993-01040

Effective Date: October 31, 1994
Expiration Date: December 31, 1994

AMENDMENT TO
DEPARTMENT OF THE ARMY PROGRAMMATIC GENERAL PERMIT
COMMONWEALTH OF MASSACHUSETTS

The New England Division of the U.S. Army Corps of Engineers hereby amends the Massachusetts Programmatic General Permit (PGP) issued August 24, 1993, as follows:

The current expiration date of the PGP shall be extended to December 31, 1994.

Christine Gospley

for

William F. Lawless, P.E.
Chief, Regulatory Division
Operations Directorate

TELEPHONE OR VERBAL CONVERSATION RECORD

For use of this form see AR 340-15, the proponent agency is The Adjutant General's Office

Nov. 2, 1994

SUBJECT OF CONVERSATION

INCOMING CALL

PERSON CALLING	ADDRESS	PHONE NUMBER AND EXTENSION

PERSON CALLED	OFFICE	PHONE NUMBER AND EXTENSION

OUTGOING CALL

PERSON CALLING	OFFICE	PHONE NUMBER AND EXTENSION
M. Stillman	Reg	78152

PERSON CALLED	ADDRESS	PHONE NUMBER AND EXTENSION
Jamie Fossberg	NPS - Boston	617-223-5131

SUMMARY OF CONVERSATION

NPS prefers that GP does not apply on designated segments - kick out to IP. Limits of work would be OWA and/or adjacent wetlands.

Can we specify segments on our list? (list has not changed.)

Public review and comment are important - that is how rivers get designated to begin with.

Our concern: reducing process for minimal-impact work.

They would like a screening procedure for projects above and below designated segments and tributaries eg: 1st order tributaries and above or below on the main stem.

Framington R. Mgmt plan (1993) stated that NPS + Corps would develop screening (coordination) procedures for these segments.

(If so - 15 days too short.)



REPLY TO
ATTENTION OF

CENED-OD-R
1993-01040

DEPARTMENT OF THE ARMY
NEW ENGLAND DIVISION, CORPS OF ENGINEERS
424 TRAPELO ROAD
WALTHAM, MASSACHUSETTS 02254-9149

Effective Date: October 31, 1994
Expiration Date: December 31, 1994

AMENDMENT TO
DEPARTMENT OF THE ARMY PROGRAMMATIC GENERAL PERMIT
COMMONWEALTH OF MASSACHUSETTS

The New England Division of the U.S. Army Corps of Engineers hereby amends the Massachusetts Programmatic General Permit (PGP) issued August 24, 1993, as follows:

The current expiration date of the PGP shall be extended to December 31, 1994.

Christine Godfrey

for

William F. Lawless, P.E.
Chief, Regulatory Division
Operations Directorate



Public Notice

US Army Corps
of Engineers
New England Division
424 Trapelo Road
Waltham, MA 02254-9149

Date: October 4, 1994
Comment Period Closes: _____
File No: 1993-01040
In Reply Refer To: Monica L. Stillman

NEW ENGLAND DIVISION OF THE U.S. ARMY CORPS OF ENGINEERS, 424 TRAPELO ROAD, WALTHAM, MASSACHUSETTS 02254-9149 under Section 10 of the Rivers and Harbors Act of 1899, and Section 404 of the Clean Water Act, hereby extends the Massachusetts Programmatic General Permit (PGP), issued August 24, 1993, to December 31, 1994. This extension is to allow us to complete coordination with the Massachusetts Department of Environmental Protection on pending revisions to their 401 Water Quality Certification regulations. Upon expiration of the current PGP, we expect to reissue the PGP with minor revisions, for a five year period.

If you have any questions, please contact Monica Stillman at (617)647-8862 or use our toll free number (800) 343-4789 or (800) 362-4367 if calling from within Massachusetts.

SEE REVERSE SIDE FOR
DETAILS OF EVALUATION
FACTORS

A handwritten signature in cursive script that reads "Christine Godfrey".

Christine Godfrey
Chief, Policy Analysis Branch
Regulatory Division

The decision whether to issue a permit will be based on an evaluation of the probable impact of the proposed activity in the public interest. That decision will reflect the national concern for both protection and utilization of important resources. The benefit which may reasonably accrue from the proposal must be balanced against its reasonably foreseeable detriments. All factors which may be relevant to the proposal will be considered, including the cumulative effects thereof; among those are: conservation, economics, aesthetics, general environmental concerns, wetlands, cultural values, fish and wildlife values, shoreline erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food production and, in general, the needs and welfare of the people.

Where the activity involves the discharge of dredged or fill material into waters of the United States or the transportation of dredged material for the purpose of disposing it in ocean waters, the evaluation of the impact of the activity in the public interest will also include application of the guidelines promulgated by the Administrator, U.S. Environmental Protection Agency, under authority of Section 404(b) of the Clean Water Act, and/or Section 103 of the Marine Protection Research and Sanctuaries Act of 1972 as amended.

Based on his initial review, the District Engineer has determined that little likelihood exists for the proposed work to impinge upon properties listed in or eligible for listing in the National Register of Historic Places, and no further consideration of the requirements of the Preservation of Historical and Archaeological Data Act of 1974 is necessary. This determination is based on one or more of the following:

- a. The permit area has been extensively modified by previous work.
- b. The permit area has been recently created.
- c. The proposed activity is of limited nature and scope.
- d. Review of the latest published version of the National Register shows that no presence of registered properties or properties listed as being eligible for inclusion therein are in the permit area or general vicinity.

Presently, unknown archaeological, scientific, pre-historic or historical data may be lost or destroyed by work to be accomplished under the requested permit.

Pursuant to the Endangered Species Act, the District Engineer is hereby requesting that the appropriate Federal Agency provide comments regarding the presence of and potential impacts to listed species or its critical habitat.

The initial determinations made herein will be reviewed in light of facts submitted in response to this notice.

The following authorizations have been applied for, or have been, or will be obtained:

- | | |
|-------------------------------------|--|
| <input type="checkbox"/> | Permit, License or Assent from the State. |
| <input type="checkbox"/> | Permit from Local Wetland Agency or Conservation Commission. |
| <input checked="" type="checkbox"/> | Water Quality Certification in accordance with Section 401 of the Clean Water Act. |

The States of Connecticut, Maine, Massachusetts, New Hampshire and Rhode Island have approved Coastal Zone Management Programs. Where applicable the applicant states that any proposed activity will comply with and will be conducted in a manner that is consistent with the approved Coastal Zone Management Program. Issuance of a State permit from the appropriate State agency will indicate concurrence with this statement of Consistency.

All comments will be considered a matter of public record. Copies of letters of objection will be forwarded to the applicant who will normally be requested to contact objectors directly in an effort to reach an understanding.

THIS NOTICE IS NOT AN AUTHORIZATION TO DO ANY WORK.

If you would prefer not to continue receiving public notices, please check here () and return this portion of the public notice to: U.S. Army Corps of Engineers - New England Division, Attn: Regulatory Division, Bldg 108N, 424 Trapelo Road, Waltham, MA 02254-9149.

NAME: _____

ADDRESS: _____

cc:Mail for: Monica J Stillman

Subject: MAPGP Comments
From: TIMOTHY L TIMMERMANN 10/19/94 11:59 AM
To: MONICA J STILLMAN
cc: TIMOTHY L TIMMERMANN
cc: KAREN K ADAMS

Comments

11-2-94

I offer the following comments on the draft PGP:

1. On page two under heading C., second paragraph of that section: This section tells the applicant to submit their NOI and plans to us but does not mention that if the project is a true category II project it will require 8.5" by 11" plans. Not a big deal but we should probably refer the applicant reading this info. at this point to the later section of the document which describes the plan requirements for Category II and III authorizations. *8 1/2 x 11's Not required for GP.*
2. Also under heading C., page 2 last paragraph of section: Why don't we just ask for a copy of the letter they sent to the MHC instead of a statement? *added, submit either one*
3. Page 3 under additional information required (c): I believe that in this section or somewhere in this section the applicant should be informed that submerged aquatic vegetation beds (SAV's) such as eelgrass or widgeon grass should be mapped or delineated for the site. If not submitted with the original application delays to the applicant can occur. *added to list*
4. Page 3 under additional information required (f): Even though the HTL is mentioned in (e) I think it should also be added into (f) as this is often omitted from filings we receive. *added*
5. Page 4 under #2: May also wish to mention that the Extreme High Water mark (EHW) delineated by applicants for Chapter 91 purposes may not be the HTL. *left out - not all are listed.*
6. Page 6 under #19: The condition as written is clear however it completely ignores the issue of spawning or nursery areas for various other water breeders such as amphibians etc. If it is left out intentionally then I believe the EA should provide specific direction as to why and also should provide some basis for more intensive review of these areas if a project manager and branch chief determine that it is necessary. An additional condition could be added or this condition could be clarified to state fish and amphibian spawning or nursery areas. It is important to note that in most cases the overall threat to the special aquatic sites that support amphibian spawning/nursery activities is probably greater than that to streams as the streams are always shown on plans etc. *history of this condition: essentially a t.o.y. restriction to avoid constr. action impacts for fish etc in rivers, waterways. Vernal pool issue is separate.*
7. Second Page of PGP Categories chart under (e) Pile Supportes Structures and Floats: The revised language adds that no structures or moored vessels are allowed over vegetated shallows or salt marsh. Does this provision include the tie up of boats at a pier that may create this situation? If not, we should state, if so, we should indicate. *that is what it means.*

Overall, I am a strong advocate of the PGP process and I hope that discussions can occur about my comment #6 as I think a better approach can be formulated. The rest of my comments are nit picky because I on the whole I found the Draft to be really solid.

See
next sheet -

Thanks for the chance to comment!!! Tim

Vernal pools - we are reluctant to prohibit
C 500 s.f. impacts with vernal pools in
Cat. I.

If Certified - state reviews.

If not certified - we need info to indicate it is
a vernal pool.

If info is available we have ability to kick-out.

How do you see it?

Monica

FACSIMILE TRANSMITTAL HEADER SHEET

For use of this form, see AR 25-11, the proponent agency is DDISC4

COMMAND/ OFFICE		NAME/ OFFICE SYMBOL		OFFICE TELEPHONE NO. (AUTOVON/Comm.)		FAX NO (AUTOVON/Comm.)	
FROM:							
Monica Stillman		CENED-AD-R		617-647-8152			
TO:							
Jamie Fosburgh		National Park Service		617-223-5131		617-223-5172	
CLASSIFICATION	PRECEDENCE	NO. PAGES (Including this Header)	DATE-TIME	MONTH	YEAR	RELEASER'S SIGNATURE	
		7					

REMARKS

Space Below For Communications Center Use Only

DA FORM 3918-R, JUL 99

DA FORM 3918-R, AUG 72 IS OBSOLETE

USAPPC V2.10

Jamie Fosburg: Attached are proposed changes to Massachusetts Programmatic General Permit regarding Wild and Scenic Rivers. Procedures sheet - 8a - is for Corps use and will not be attached to copies for general distribution. Please review these changes and determine if they are appropriate.

I will be out of the office this week + next week - returning Friday Oct. 28. I will contact you when I return to discuss.

Thank you for your time and assistance -

Monica Stillman

- Attached:
- 1) Terms of P&P - Category I (non-reporting) doesn't apply in Wild Rivers
 - 2) Condition 9 regarding Wild + Scenic Rivers
 - 3) Detailed procedures for NPS / Corps staff.

Permit No.: 1993-01040

Effective Date: January 1, 1995
Expiration Date: December 31, 1999

[10-19-94]

Applicant: General Public in Massachusetts

DEPARTMENT OF THE ARMY PROGRAMMATIC GENERAL PERMIT
COMMONWEALTH OF MASSACHUSETTS

The New England Division of the U.S. Army Corps of Engineers hereby issues a programmatic general permit that expedites review of minimal impact work in coastal and inland waters and wetlands within the Commonwealth of Massachusetts. Activities with minimal impacts, as specified by the terms and conditions of this general permit, are either non-reporting (provided required local and state permits and required state certifications are received), or are to be screened by the Corps and federal resource agencies for applicability under the general permit. The Corps individual permit review process, and activities exempt from Corps jurisdiction, are not affected by this proposal.

Activities covered by this general permit include 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), as well as 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).

Procedures

A. State and Local Approvals

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

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

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

(c) For work in Corps jurisdiction involving a discharge to waters of the U.S., an individual 401 water quality certification (WQC) ¹ must be obtained from the Massachusetts DEP before work can proceed pursuant to this general permit for the following circumstances: *[This will be changed per 401]*

1. proposed work that is not subject to the WPA (310 CMR 10.00) but does require a 401 Water Quality Certification and proposes the loss of bordering vegetated wetlands, land under water, or federal non-state wetland (e.g., WPA exemptions);
2. any project intended to create a real estate subdivision for which a Notice of Intent is submitted on or after October 1, 1992;
3. Any project which will result in the loss of more than 5,000 square feet of bordering vegetated wetlands or land under water;

(1) See MGL c. 21 Sections 26 - 53 and regulations at 314 CMR 9.00, as supplemented by the Interim Guidance effective 10/1/92.



Commonwealth of Massachusetts
Executive Office of Environmental Affairs

Department of Environmental Protection

William F. Weld

Governor

Trudy Cox

Secretary, EOEIA

Thomas B. Powers
Acting Commissioner

October 6, 1994

Mr. William Lawless
Chief, Regulatory Division
U.S. Army Corps of Engineers
424 Trapelo Road
Waltham, MA 02254-9149

Dear Mr. Lawless:

As you know, the Massachusetts Programmatic General Permit (PGP) expires on October 31, 1994. The Department of Environmental Protection requests that the Corps extend the PGP until December 31, 1994. The purpose of this extension is to achieve coordination with the projected effective date (January 1, 1995) of the Department's 401 Water Quality Certification Regulations.

The Corps, DEP, the Office of Coastal Zone Management, and other federal resource agencies have engaged in the cooperative effort of developing the PGP for the past two years. The Department has simultaneously been revising its 401 program to increase environmental protection while reducing procedural requirements wherever possible. The Department believes that a concurrent schedule will minimize the inevitable confusion that accompanies regulatory change, while providing our agencies the opportunity to jointly publicize this streamlining effort.

The Department looks forward to a concurrent commencement of the PGP and the 401 regulations. Please let me know if you have any questions.

Sincerely,

Carl Dierker
Director, Division of
Wetlands & Waterways

cc: Chris Godfrey, COE
Robert Gollidge, Pamela Harvey, DEP
Margaret Brady, Lois Bruinooge, CZM

TELEPHONE OR VERBAL CONVERSATION RECORD

For use of this form see AR 340(1). The procuring agency is The Adjutant General's Office.

Sep. 29, 1994

SUBJECT OF CONVERSATION

MA PGP - Beach Nourishment

INCOMING CALL

PERSON CALLING Grant Kelly	ADDRESS PM	PHONE NUMBER AND EXTENSION
PERSON CALLED M. Stillman	OFFICE	PHONE NUMBER AND EXTENSION

OUTGOING CALL

PERSON CALLING	OFFICE	PHONE NUMBER AND EXTENSION
PERSON CALLED	ADDRESS	PHONE NUMBER AND EXTENSION

SUMMARY OF CONVERSATION

Beach Nourishment:

Can 1 acre threshold be changed for beach nourishment?
ie. allow > 1 acre in Cat. II.

* 1 acre at 1' depth (typical) = 1600 cu. y. disposed below HTL.

* 10,000 cu. y. at 1' depth = 270,000 s.f. or 6.2 acres

Justification for special threshold: beach nourishment is beneficial and is economically beneficial - it is much cheaper than other disposal options.

TELEPHONE OR VERBAL CONVERSATION RECORD

For use of this form see AR 140-15, the proponent agency is The Adjutant General's Office.

9-26-94

SUBJECT OF CONVERSATION

MA PGP - NMFS

INCOMING CALL

PERSON CALLING	ADDRESS	PHONE NUMBER AND EXTENSION
PERSON CALLED	OFFICE	PHONE NUMBER AND EXTENSION

OUTGOING CALL

PERSON CALLING	OFFICE	PHONE NUMBER AND EXTENSION
M. Stillman	Reg B	7152
PERSON CALLED	ADDRESS	PHONE NUMBER AND EXTENSION
Jon Kurland	NMFS	508-281-9300

SUMMARY OF CONVERSATION

Outstanding issues:

1) ESA: "may affect" vs "no jeopardy".

May affect = biological assessment required -
 Should be IP.
 No affect could be PGP.

2) Vessels moored in intertidal zone.

Can we handle by area, eg. with HM, etc?
 Should we add to PGP as a restriction too?

3) Eelgrass issue - moorings - we oppose for mooring/^{mopping} enforcement reasons.
 piers within 50':

would be better to tighten
 up what we mean by "eelgrass" -
 ie. if it grows in the vicinity / is likely
 to grow at project site.

September 16, 1994

MEMORANDUM TO THE FILE: MA PGP 1993-01040
SUBJECT: Reissuance
FROM: Monica Stillman

1. Chris Godfrey and I met with Peg Brady and Lois Bruinooge of MA CZM, and Pam Harvey and Bob Golledge of MA DEP to discuss revisions to the MA PGP and WQC and CZM consistency.

2. General Items:

a) 401 regulations effective date moved to January (401 advisory committee meetings scheduled for Sep. 30 and Oct. 14 to discuss public comments). We asked DEP to provide us with the likely text changes for the PGP. However, they believe it will be most effective to issue the PGP at the same time that the new 401 regulations become effective. Therefore they asked us to extend the current PGP until that time.

DEP expects to have wetland delineation changes effective sometime spring 1995, but the new regulations should be published prior to that.

b) We will schedule a joint press release, and possibly a press event, through the Governor's office, for sometime early in January. [Chris will let me know if Col. Williams or Col. Durham should attend. I will then inform the front office and PAO, and get a contact for DEP, CZM, and MA Exec. Sec.]

c) Spot-checking: results from first round conducted last spring were generally very favorable. Cat. I work is as we expected. The difference in Federal and State delineation remains a substantial problem, with Federal impacts under Cat. I projects typically unknown. There remains a minor problem with Cat. I work that is not clearly single/complete projects, and/or where all project impacts are not clear.

Karen Adams will be overseeing spot-checking on a regular basis with reissuance of the PGP. We will not need to conduct another check until reissuance. The schedule may be one spot-check at each regional office every 6 months.

d) Other issues to resolve prior to reissuance:

- Several NMFS concerns; I will provide CZM the wording for the condition about storage of floats, seasonal structures above mean high water/salt marsh (provide to DEP for Ch. 91 to use). NMFS concerns with eelgrass; DEP/DEM currently making an eelgrass map for the state, will likely take 2 - 3 years to complete. CZM agrees that eelgrass/mooring concerns for private moorings would best be handled through regional planning mechanisms, rather than case by case (e.g., HMPS).

- Vernal pools; condition 19 on spawning reworded.
- DEP favors no exceptions to 1 acre threshold, for limited projects or any other work. There are too many special interests to provide exceptions.

e) CZM: I explained two items that should be clarified with regard to CZM consistency and PGP:

- We would like to specify more clearly for applicants when they do/do not need to apply to CZM under PGP.
- We need latitude to fit minimal-impact work under the PGP; we have been locked into IP review on some projects because of CZM concerns.

It was decided that CZM would provide an expanded list of projects they would like to "screen" under Cat. II (coastal armoring only listed in draft). They would also like to participate in JP. This would give them the opportunity to let us know if they will be requiring an individual consistency review for a Cat. II project, and/or provide us with modifications or conditions that would make the work appropriate for a waiver. Cat. I would be waived for CZM. They will have to review the draft in more detail to provide us a list of Cat. II projects of concern.

I asked if there was a difference from their perspective with Corps issuance of an IP or a procedural denial. They responded that they can't condition CZM consistency concurrences. The joint coordination with CZM will take care of this problem. Joint coordination will also tighten the links between our programs.

f) Next steps:

- DEP to review PGP text, let me know likely changes for 401.
- CZM to provide Cat. II projects that may require individual consistency review.
- I will provide CZM and DEP with language for condition on float storage.
- Arrange press release/event for first week of Jan.
- Issue PN extending current PGP. Get exact date from DEP.
- Complete coordination with Federal agencies; get draft to agencies and Branch A.
- Spot-checking information/stats to Karen Adams.
- Draft EASOF for reissuance.



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
NEW ENGLAND DIVISION, CORPS OF ENGINEERS
424 TRAPELO ROAD
WALTHAM, MASSACHUSETTS 02254-9149

September 12, 1994

Regulatory Division
CENED-OD-R

Massachusetts DEP
Division of Water Pollution Control
Attn: John Higgins
1 Winter Street
Boston, Massachusetts 02108

Dear Mr. Higgins:

I am writing to transmit the draft, revised Massachusetts Programmatic General Permit (PGP), and to request that your agency issue Water Quality Certification for the PGP in accordance with Section 401 of the Clean Water Act. We anticipate including revisions to the section on 401 water quality certification requirements, based on the pending revisions to your regulations.

We would like to reissue the PGP prior to expiration of the current PGP, on October 31, 1994. Therefore, your timely review would be greatly appreciated. Please also provide, as soon as possible, the necessary revisions to the 401 water quality certification requirements for the text of the PGP.

Please contact Monica Stillman at (617) 647-8152 if you have any questions. Thank you for your continued assistance in this matter.

Sincerely,

William F. Lawless, P.E.
Chief, Regulatory Division
Operations Directorate

Enclosure

mjs
pm

Cy
BRCH



DEPARTMENT OF THE ARMY
NEW ENGLAND DIVISION, CORPS OF ENGINEERS
424 TRAPELO ROAD
WALTHAM, MASSACHUSETTS 02254-9149

REPLY TO
ATTENTION 01

September 12, 1994

Regulatory Division
CENED-OD-R

Coastal Zone Management
Attn: Peg Brady, Director
100 Cambridge Street 20th Floor
Boston, Massachusetts 02202

Dear Ms. Brady:

I am writing to transmit the draft, revised Massachusetts Programmatic General Permit (PGP), and to request your determination of the concurrence of this PGP with the Massachusetts Coastal Program. The Corps of Engineers believes that the activities to be authorized under this PGP comply with and will be conducted in a manner consistent with the Massachusetts Coastal Management Program.

We met with Jane Mead this past summer to discuss proposed changes to the PGP that will streamline the review process for the Corps and for applicants. It has been our goal throughout the trial period of the PGP to develop the clearest, simplest guidelines possible for permit applicants, to let them know what permits and approvals are necessary for particular projects.

Based on the language CZM is currently using for MEPA comments, it appears that CZM is already waiving federal consistency review for projects that qualify for the PGP. We would like to specify so in the text of the PGP so that applicants know that as long as they qualify for the PGP, they do not need an individual CZM consistency concurrence.

We are proposing to change the status of coastal armoring projects in the PGP, to allow screening for new armoring projects. This is to allow coastal armoring of minimal size and/or impacts to be authorized by the Corps under the PGP. One proposed solution (incorporated in the enclosed draft) is to provide your office with the opportunity to review proposals for new coastal armoring, and respond to the Corps if you have concerns. An individual CZM consistency concurrence would be required for those projects, and the Corps would issue a procedural denial. In keeping with the overall goals of the PGP, this will ensure that projects of concern receive the appropriate level of review, while minimizing duplication of review.

Most of the remaining changes to the PGP are minor text revisions. All changes from the current PGP have been noted in one of the enclosed copies.

We would like to be able to issue the revised PGP prior to expiration of the current PGP, on October 31, 1994. Therefore your timely review would be greatly appreciated.

Please contact Monica Stillman at (617) 647-8152 if you have any questions, and thank you for your continued assistance on this matter.

Sincerely,

Christine Jodrey



William F. Lawless, P.E.
Chief, Regulatory Division
Operations Directorate

Enclosure



COASTAL ZONE
MANAGEMENT

The Commonwealth of Massachusetts
Executive Office of Environmental Affairs
100 Cambridge Street
Boston, Massachusetts 02102

MEMORANDUM

To: Jan Reitsma, Director, MEPA Unit
From: Margaret M. Brady, Director, MCZM
Date: August 23, 1994
Re: EOE # 10088 Clark license existing pier & seawall;
Falmouth

The Massachusetts Coastal Zone Management (MCZM) Office has completed its review of the above-referenced Environmental Notification Form (ENF), noticed in the Environmental Monitor dated August 23, 1994, and does not have any comments on the project as proposed.

If these structures were built prior to December 18, 1968, they may be eligible for the US Army Corps of Engineers (ACOE) grandfathering program, in which case no MCZM federal consistency review is required. If built or repaired after December 18, 1968, these structures may be eligible for an ACOE programmatic general permit (PGP). If so, MCZM has reviewed the PGP and found it consistent with its enforceable program policies, and therefore the applicant may presume that the project is consistent after all other applicable state licenses and permits have been obtained. However, if an individual ACOE permit is required for this project, the applicant must complete the MCZM federal consistency review process. Questions regarding this process may be directed to Jane W. Mead, MCZM Project Review Coordinator, at 617 - 727-9530 x418.

MMB/JWM

cc: Karen Kirk Adams, Chief
Regulatory Division, US Army Corps of Engineers
John Simpson, Section Chief
Waterways Regulation, Massachusetts DEP
Elizabeth Kouloheras, Section Chief,
Southeast Regional Office, Massachusetts DEP
Pam Rubinoff
MCZM Cape Cod Regional Coordinator

REMOVED

TELEPHONE OR VERBAL CONVERSATION RECORD

For use of this form see AR 340-13. The proponent agency is The Adjutant General's Office.

Sept. 6, 1994

SUBJECT OF CONVERSATION

MA PGP - CZM

INCOMING CALL

PERSON CALLING	ADDRESS	PHONE NUMBER AND EXTENSION

PERSON CALLED	OFFICE	PHONE NUMBER AND EXTENSION

OUTGOING CALL

PERSON CALLING	OFFICE	PHONE NUMBER AND EXTENSION
M. Stillman	Reg B	7152

PERSON CALLED	ADDRESS	PHONE NUMBER AND EXTENSION
Jane Mead	CZM	

SUMMARY OF CONVERSATION

She will be out on leave from 9-9 - back in 9-26.

- 1) CZM "discretionary authority": they see projects for MEPA review before we do. Their MEPA comment letter is sent to us. Karen indicated she is having difficulty getting comment letters to PMs. However this earlier review by CZM gives them the option of exercising Discr. Auth.
- 2) New coastal armoring. They think the Corps should be providing more services. They don't think PD process is merely "procedure". I told her we have no guidelines to apply more stringent review.

TELEPHONE OR VERBAL CONVERSATION RECORD

For use of this form see AR 340-13. The procuring agency is The Adjutant General's Office

Sep. 6, 1994

SUBJECT OF CONVERSATION

MA PGP - C2M

INCOMING CALL

PERSON CALLING	ADDRESS	PHONE NUMBER AND EXTENSION
PERSON CALLED	OFFICE	PHONE NUMBER AND EXTENSION

OUTGOING CALL

PERSON CALLING	OFFICE	PHONE NUMBER AND EXTENSION
M. Stillman	Reg	
PERSON CALLED	ADDRESS	PHONE NUMBER AND EXTENSION
Tom Bruha	Reg B. A.	

SUMMARY OF CONVERSATION

- 1) He is seeing extended C2M review for work we would consider minimal. Never leads to denial - C2M issues (or waivers) with fairly general conditions.
- 2) Prefers issuance of procedural denial to waiting for C2M process (6 mo review schedule.)
- 3) C2M (Jane Mead) has indicated to him that for existing work she is waiting for determination from Corps that PGP or grandfathering applies. If so C2M won't review it.

TELEPHONE OR VERBAL CONVERSATION RECORD

For use of this form, see AR 340-13. The procuring agency is The Adjutant General's Office.

SUBJECT OF CONVERSATION

INCOMING CALL

PERSON CALLING	ADDRESS	PHONE NUMBER AND EXTENSION
PERSON CALLED	OFFICE	PHONE NUMBER AND EXTENSION

OUTGOING CALL

PERSON CALLING	OFFICE	PHONE NUMBER AND EXTENSION
M. Stillman	Reg B	7152
PERSON CALLED	ADDRESS	PHONE NUMBER AND EXTENSION
Jane Mead	CZM	227- 9530

SUMMARY OF CONVERSATION

X 418

Bank Stabilization: New work screened in Cat. II with coordination / kick-out by CZM? TO resolve problem of defining a lower threshold for screening new work.

agencies have ^{total} 20 days from JP to object -
 10 working days after JP for verbal objection
 10 " " after that for written objection

Spawning Areas:

TELEPHONE OR VERBAL CONVERSATION RECORD

The use of this form, see AR 340.13, the proponent agency is The Adjutant General's Office.

Sep. 1, 1994

SUBJECT OF CONVERSATION

MA PGP changes

INCOMING CALL

PERSON CALLING	ADDRESS	PHONE NUMBER AND EXTENSION
PERSON CALLED	OFFICE	PHONE NUMBER AND EXTENSION

OUTGOING CALL

PERSON CALLING	OFFICE	PHONE NUMBER AND EXTENSION
M. Stillman	Reg B	7152
PERSON CALLED	ADDRESS	PHONE NUMBER AND EXTENSION
Vern Lang	FWS	603-225-1411

SUMMARY OF CONVERSATION

Spawning Condition: originally applied to fish. Expanded in some gps to condition re: waterfowl breeding & nesting areas. They would like it as broad as possible. Avoid + minimize: Cat I evaluation is burden of appl. anyway. Let it be broad, and define as such.

Bank stability: our choice of categories is ok. Main concern is distinction between repair + replacement.

Dredging - open-water disposal - Cat III. ✓

Beach nour. - 1 clarified currently up to 1 acre in Cat II we likely won't put any in Cat. I.

T.O.Y. - clarity for complete crossings? No - let us review construction activities and decide if TOY needed. (e.g. not strictly for complete crossings.)

Limiteds: No change likely.

Revised draft over next several weeks.

DA FORM 751 APR 66

REPLACES EDITION OF 1 FEB 64 WHICH WILL BE USED.

TELEPHONE OR VERBAL CONVERSATION RECORD

For use of this form see AR 340 15. The proponent agency is The Adjutant General's Office.

Aug. 31, 1994

SUBJECT OF CONVERSATION

INCOMING CALL

PERSON CALLING	ADDRESS	PHONE NUMBER AND EXTENSION
PERSON CALLED	OFFICE	PHONE NUMBER AND EXTENSION

OUTGOING CALL

PERSON CALLING	OFFICE	PHONE NUMBER AND EXTENSION
M. Stillman	Reg B	7152
PERSON CALLED	ADDRESS	PHONE NUMBER AND EXTENSION
Doug Thompson	EPA	565-4422

SUMMARY OF CONVERSATION

Met: 565-4431

Spawning Areas:

Bank stabilization: repair Cat I
 replacement Cat II
 new work Cat II w/cem kick-out

Open water disposal: to remain Cat III

Beach nourishment: remain Cat II

T.O.P: to be left as is; clarify for construction projects
 with complete crossings/diversion required.

MA PGP Final Actions

August 24, 1993 - August 24, 1994:

# Issued	Ave. t (days)
Cat I: 389	17
Cat II: <u>171</u>	20
Total: <u>560</u>	

Cat. I: at least 106 were amnesty projects
 Fill: 15.58 acres filled (includes some atf and repair fill)

Cat. II: 28.46 acres (includes some atf and repair fill)

8/24/92 - 8/24/93:

NWPs.....180
 Proc. Den.....154
 GPs.....52
 LOPs.....43
 MA LOPs.....45

Total.....474

IPs.....44 (8.4%)
 Denials.....3 (0.5%)

Total Actions.521

8/24/93 - 8/24/94:

Cat. I.....389
 Cat. II.....171
 Total.....560

IPs.....20 (3.4%)
 Denials.....2 (0.3%)

Total Actions..582

[5] From: KAREN K ADAMS 8/11/94 2:45PM (1555 bytes: 23 ln)
To: MONICA J STILLMAN
Subject: misc

----- Message Contents -----

PLEASE remember to have the RAMS req'd field reports in the file and now also the nonfilmable items list before you give me the file to sign off. Also the PGP II files should have public notice quality plans. We have to be able to do compliance inspections, etc on these just as we would for an IP. Reduced plans are not allowed, we must have correct scale. Its not the margins and format that's important, its the information and clarity.

Real Estate has asked that we have each Branch specify one person only to use the fullsize plan copier. Mia has been designated. We should not normally be copying full size plans to provide to the agencies. Complete sets should be provided by the applicant. If Pm's want to make 8x11 copies of the fullsize plans, they are taking on the responsibility from the agent of making sure they are acceptable. My suggestion is that when you request the SHPO letter you also request PN quality plans. The truly small projects are now Cat I and as an application is not required, there are no plan requirements.

Monica-I'm getting lousy plans as agents try to rush thru PGP projects. I'd prefer to make 8x11 plans (PN quality) required in the PGP text.

*highlight clear reproducible
plans.*



DEPARTMENT OF THE ARMY
NEW ENGLAND DIVISION, CORPS OF ENGINEERS
424 TRAPELO ROAD
WALTHAM, MASSACHUSETTS 02254-9149

REPLY TO
ATTENTION OF

August 5, 1994

Regulatory Division
CENED-OD-R-1993-01040

Conservation Law Foundation
Attn: Eleanor M. Dorsey
Grace I. Perez
62 Summer Street Room 2006
Boston, Massachusetts 02110-1008

Dear Ms. Dorsey and Ms. Perez:

This is to acknowledge your letter concerning proposed changes to the Massachusetts Programmatic General Permit (PGP). I sincerely apologize for the delay in acknowledging receipt of your comments. We have agreed with the Massachusetts DEP to delay implementation of the revised PGP to more closely coincide with implementation of their revised 401 regulations. This has given us more time to complete our evaluation of the revisions. We currently anticipate reissuing the PGP this fall with an effective date that closely corresponds to the DEP's effective date for 401 regulations.

We thank you for taking the time to express your opinion on the proposed changes. Your letter has been made part of the official file and your views, along with all other comments received, will be carefully weighed in determining what action is in the best public interest.

If you have any questions about the status of the PGP, or wish to discuss any element of the PGP and the proposed revisions, do not hesitate to contact me at (617) 647-8862.

Sincerely,

Monica J. Stillman
Senior Project Manager
Regulatory Division

mjs
PM



DEPARTMENT OF THE ARMY
NEW ENGLAND DIVISION, CORPS OF ENGINEERS
424 TRAPELO ROAD
WALTHAM, MASSACHUSETTS 02254-9149

REPLY TO
ATTENTION OF

August 5, 1994

Regulatory Division
CENED-OD-R-1993-01040

Coastal Advocacy Network
Attn: Mason Weinrich, Chair
c/o Massachusetts Bays Program
100 Cambridge Street Room 2006
Boston, Massachusetts 02202

Dear Mr. Weinrich:

This is to acknowledge your letter concerning proposed changes to the Massachusetts Programmatic General Permit (PGP). I sincerely apologize for the delay in acknowledging receipt of your comments. We have agreed with the Massachusetts DEP to delay implementation of the revised PGP to more closely coincide with implementation of their revised 401 regulations. This has given us more time to complete our evaluation of the revisions. We currently anticipate reissuing the PGP this fall with an effective date that closely corresponds to the DEP's effective date for 401 regulations.

We thank you for taking the time to express your opinion on the proposed changes. Your letter has been made part of the official file and your views, along with all other comments received, will be carefully weighed in determining what action is in the best public interest.

If you have any questions about the status of the PGP, or wish to discuss any element of the PGP and the proposed revisions, do not hesitate to contact me at (617) 647-8862.

Sincerely,

Monica J. Stillman
Senior Project Manager
Regulatory Division

mjs
/PM



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
NEW ENGLAND DIVISION, CORPS OF ENGINEERS
424 TRAPELO ROAD
WALTHAM, MASSACHUSETTS 02254-9149

August 5, 1994

Regulatory Division
CENED-OD-R-1993-01040

Commonwealth of Massachusetts
Aeronautics Commission
Attn: Stephen R. Muench
Armand J. Dufresne
10 Park Plaza Room 6620
Boston, Massachusetts 02116-3966

Dear Mr. Muench and Mr. Dufresne:

This is to acknowledge your letter concerning proposed changes to the Massachusetts Programmatic General Permit (PGP). I sincerely apologize for the delay in acknowledging receipt of your comments. We have agreed with the Massachusetts DEP to delay implementation of the revised PGP to more closely coincide with implementation of their revised 401 regulations. This has given us more time to complete our evaluation of the revisions. We currently anticipate reissuing the PGP this fall with an effective date that closely corresponds to the DEP's effective date for 401 regulations.

We thank you for taking the time to express your opinion on the proposed changes. Your letter has been made part of the official file and your views, along with all other comments received, will be carefully weighed in determining what action is in the best public interest. I have also received copies of the GEIR prepared for airport tree clearing projects and am currently reviewing that document and your comments.

If you have any questions about the status of the PGP do not hesitate to contact me at (617) 647-8862.

Sincerely,

njs
pm

Monica J. Stillman
Senior Project Manager
Regulatory Division



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
NEW ENGLAND DIVISION, CORPS OF ENGINEERS
424 TRAPELO ROAD
WALTHAM, MASSACHUSETTS 02254-9149

August 5, 1994

Regulatory Division
CENED-OD-R-1993-01040

Save the Harbor Save the Bay
Attn: Jodi Sugerman, Policy Director
25 West Street
Boston, Massachusetts 02111

Dear Ms. Sugerman:

This is to acknowledge your letter concerning proposed changes to the Massachusetts Programmatic General Permit (PGP). I sincerely apologize for the delay in acknowledging receipt of your comments. We have agreed with the Massachusetts DEP to delay implementation of the revised PGP to more closely coincide with implementation of their revised 401 regulations. This has given us more time to complete our evaluation of the revisions. We currently anticipate reissuing the PGP this fall with an effective date that closely corresponds to the DEP's effective date for 401 regulations.

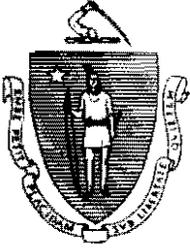
We thank you for taking the time to express your opinion on the proposed changes. Your letter has been made part of the official file and your views, along with all other comments received, will be carefully weighed in determining what action is in the best public interest.

If you have any questions about the status of the PGP, or wish to discuss any element of the PGP and the proposed revisions, do not hesitate to contact me at (617) 647-8862.

Sincerely,

Monica J. Stillman
Senior Project Manager
Regulatory Division

mjs
pm



The Commonwealth of Massachusetts

AERONAUTICS COMMISSION

10 Park Plaza, Room 6620
Boston, Massachusetts 02116-3966

DIRECTOR'S OFFICE
(617) 973-8881
FACSIMILE
(617) 973-8889

CHAIRMAN
SHERMAN W. "WHIP" SALTMARSH, JR.

VICE CHAIRMAN
JAMES M. SLATTERY

COMMISSIONERS
HENRY J. CROUSE
JAMES C. FULLERTON
WILLIAM "T" THOMPSON

July 14, 1994

U.S. Army Corps of Engineers
Ms. Monica Stillman
Regulatory Division
424 Trapelo Road
Waltham, Massachusetts 02254-9149

RE: Vegetation Removal in Wetlands GEIR

Dear Ms. Stillman:

As luck would have it, I found the very last copy of Volume 2 of the GEIR so I have enclosed it along with Volume 1.

I think you will agree with me that from a sound environmental planning perspective, the GEIR specifies state of the art methodology and procedure.

I thank you for giving my comments due consideration and I hope that your reading the GEIR will give us each some common ground upon which to continue discussion of these issues.

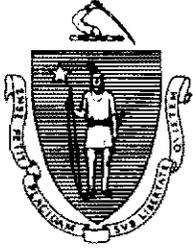
I look forward to meeting with you and your colleagues to discuss the Commission's request to modify the PGP so that Massachusetts airports can come into compliance with the FAA's safety regulations without undue delay.

Sincerely,

A handwritten signature in cursive script, appearing to read "Armand J. Dufresne".

Armand J. Dufresne
Consulting Environmental Planner

JUL 15 1994



The Commonwealth of Massachusetts

AERONAUTICS COMMISSION

10 Park Plaza, Room 6620
Boston, Massachusetts 02116-3966

DIRECTOR'S OFFICE
(617) 973-8881
FACSIMILE
(617) 973-8889

CHAIRMAN
SHERMAN W. "WHIP" SALTMARSH, JR.

VICE CHAIRMAN
JAMES M. SLATTERY

COMMISSIONERS
HENRY J. CROUSE
JAMES C. FULLERTON
WILLIAM "T" THOMPSON

June 28, 1994

U.S. Army Corps of Engineers
Regulatory Division
424 Trapelo Road
Waltham, Massachusetts 02254-9149
Attn: Ms. Monica Stillman

RE: File # 1993-01040 Proposed Mass. PGP Amendments

Dear Ms. Stillman:

This letter is in support of the letter dated May 25, 1994 from Mr. Stephen R. Muench, the Acting Executive Director of the Mass. Aeronautics Commission (MAC) wherein he requests that the airport tree clearing limited projects () be recommended for placement in the Category II - Screening permit program.

I am a consulting environmental planner with the MAC responsible for implementing its vegetation management program for public use airports. During my involvement in this important project I have had the opportunity to discuss these types of projects with several knowledgeable and concerned parties, including Stephen Muench of MAC, Deborah Hadden of CDM (the project manager for the GEIR project), Bob Golledge of DEP, and Laurie Cullen of Massport. These are all responsible professionals who share a deep concern for the sometimes competing interests of public safety and our natural environment. My association with their thoughtful perspectives on the subject has led me to conclude the following:

The tree clearing in wetlands limited projects should be placed in the Category I permit class wherein they would not require review by the Corps. Although this recommendation may appear "radical" at first glance, I assure you it is not.

These projects are clearly motivated by concern for the public safety, and timely implementation of these projects could avoid potential emergencies not unlike the dam safety and hazardous materials limited projects. However, unlike the dam safety or hazardous materials limited projects, the tree clearing limited projects must be conducted under the strict guidelines of a GEIR¹ approved by the Secretary of Environmental Affairs (EOEA) which outlines in exhaustive detail a comprehensive planning program assuring the highest possible degree of environmental safety when strictly followed.

First, and for obvious reasons, the problem of vegetation penetrating critical airspace is a public safety problem, both for the persons on the aircraft itself and for those on

¹ Final Generic Environmental Impact Report (GEIR) for Vegetation Removal in Wetlands at Public Use Airports, EOEA No. 8978, by Camp Dresser & McKee, Inc., Cambridge, MA for the Massachusetts Aeronautics Commission and Massachusetts Port Authority, 1993.

JUN 29 1994

the ground who could potentially be impacted. In your May 3rd Public Notice, the rationale behind recommending the placement of the dam safety and cleanup of oil and/or hazardous materials limited projects in Category II is clearly public safety. The Notice states in part, "The basis for this recommendation is that these types of projects warrant a quick response from the Corps for safety concerns." The Notice goes on to say that the DEM dam safety program, "...seeks to identify dam safety problems before they pose an emergency situation.", and the hazardous material clean up program, "...ties into the DEP regulations.....where there is a significant risk to health, safety, public welfare or the environment."

33 CFR 320.1 (a) states, in part, "As a result of several new laws and judicial decisions, the program has evolved to one involving the consideration of the full public interest by balancing the favorable impacts against the detrimental impacts. This is known as the 'public interest review'.", and 33 CFR 320.4 (a) further supports a balancing of those interests, and goes on to define them as including "safety" and "the needs and welfare of the people."

Consider further, that a principal element in EOEAs and DEPs decision process to require and participate in the GEIR process, is the fact that without the regulatory change prompted by the GEIR, the Mass. Aeronautics Commission was forced to seek waivers from the Mass. Wetlands Protection Act (the Act) in a majority of its tree clearing projects. Since a criteria for obtaining a waiver is the provision of, "...evidence that an overriding public interest is associated with the project...", it became clear that EOEAs would need to either provide the waivers or participate in the continuation (through legitimate regulatory delays) of a serious public safety problem. Since public safety is an "overriding public interest" the agencies sought and achieved a reasonable resolution through the GEIR process which provides adequate safety for both the environment and the public.

It is the position of the MAC and the FAA that safety at airports is an "overriding public interest" and obstructions to certain critical airspace creates a situation which requires "a quick response from the Corps for safety concerns"; poses "a significant risk to public safety"; and should be rectified before they "pose an emergency situation".

The rationale applied to justify the placement of these other limited projects into Category II is reasonably and undeniably applicable to the tree clearing limited projects.

Second, the GEIR does incorporate the latest scientific thinking and planning procedures on minimizing the effects of these types of projects on the environment. Consequently, all projects which adhere strictly to the recommendations of the GEIR are deservedly considered to have produced plans which are comprehensive and the most effective in their ability to protect wetland resources and minimize untoward impacts.

The Secretary of Environmental Affairs as well as the Department of Environmental Protection have given their approval of the processes and procedures outlined in the GEIR because they do represent the "state of the art" with regard to their consideration of the environment. Given this, what more would an additional review produce? It simply does not seem reasonable that an additional review of a limited project plan would prove productive from either an environmental assessment or mitigation perspective.

Approval of the "limited project" provision does not reduce the scope or comprehensiveness of a project's environmental review. It merely authorizes the local conservation commission to permit such an activity after it has been satisfied that all environmental concerns have been fully addressed and all feasible mitigation measures will be taken. It is not unreasonable to conclude that additional review of such a project will most likely be limited to producing redundancy.

It was recommended to me that a maximum project area "threshold" be established as part of a proposed permit category change. After considerable thought, I do not feel that such a "threshold" would serve any useful purpose from an environmental impact perspective mainly because the size of a project cannot be directly correlated to its potential environmental impacts. For example: The removal of 7 acres of trees in a 10 acre red maple swamp will clearly have a more significant impact on the environment, including wildlife habitat functions and values, than the removal of 7 acres of trees in a 200 acre red maple swamp. Although the establishment of an upper "threshold" limit would appear to add protection, it clearly would not serve such a purpose well.

In addition, the GEIR was purposefully evaluated using the assumption that the maximum potential amount of wetlands at airports would be impacted by these projects. But, it is commonly and reasonably felt that the potential amount of wetlands to be actually affected by these projects will be significantly less than the GEIR assumed. The methodologies and procedures outlined in the GEIR were directly related to this assumption, hence the inclusion of the extensive alternatives analyses required. If only a few acres of wetlands across the state had been assumed, it would have been unlikely that such extensive mitigation measures would have been prescribed. This being the case then, the GEIR requirements are clearly based on the maximum potential environmental impacts, and the introduction of a "threshold" requirement would not produce environmental benefit

Lastly, the taxpayer is absorbing the high cost of permitting these projects and where further review may not yield any further benefit beyond that which is gained from the initial planning performed under the guidance of the GEIR, why further burden the taxpayer with the additional expense?

The problem of vegetation penetrating critical airspace also represents a serious potential economic detriment to the airport, the local, regional and state economies. When any natural or man-made object penetrates certain critical airspace, the safety of that airspace is compromised. Since FAA and MAC rules require that certain critical airspace remain free of obstructions, for obvious reasons, airspace which is obstructed is in violation of these rules. The consequences to this can be onerous at best and catastrophic at worst.

Many of the airports in need of tree clearing projects are owned and operated by local cities, towns or a county governmental unit. In all these cases, they rely heavily on MAC and FAA funding for their safety, maintenance and capital improvement needs. This funding is in jeopardy as long as the airport violates the no-obstruction rules. It is common knowledge that the finances of most Massachusetts cities and towns are severely stressed, and without FAA and MAC funds many airports cannot afford to pay for their own maintenance or improvements. In effect, they could be "put out of business". Without belaboring the point, such a situation could have serious implications for the health of the local, regional and state economies.

For all these reasons, I urge you to consider placing the tree clearing in wetlands limited project in the Category I Permit category. It is my sincere belief that such an action would not be detrimental to the environment, but beneficial to the public safety and responsive to the taxpayer.

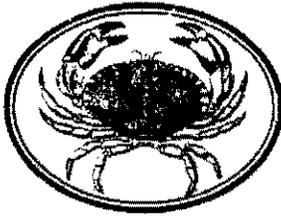
I would be pleased to meet and discuss my perspectives on these issues at your invitation. Should you desire any further information or assistance with this matter, please feel free to call upon me at 617-973-8890.

Sincerely,



Armand J. Dufresne
Consulting Environmental Planner

**cc: Stephen R. Muench, Acting Executive Director
Karen Kirk Adams, ACOE
Laurie Cullen, Massport
Deborah Hadden, CDM
Robert Golledge, DEP**



COASTAL ADVOCACY NETWORK

c/o Massachusetts Bays Program, 100 Cambridge Street, Room 2006,
Boston, MA 02202, phone: 1-800-447-BAYS, fax:(617) 727-2754

June 21, 1994

Monica J. Stillman
U.S. Army Corps of Engineers
New England Division
424 Trapelo Road
Waltham, MA 02254-9149

RE: File No. 1993-01040 - Modifications to Mass. Programmatic General Permit

Dear Ms. Stillman,

The Coastal Advocacy Network ("Network") consists of local and regional environmental advocacy and educational organizations from the communities surrounding the Massachusetts and Cape Cod Bays. The Network is dedicated to the protection and restoration of marine and coastal resources and achieves its advocacy positions through a consensus process.

We are writing to you with respect to the changes proposed to the Massachusetts Programmatic General Permit (PGP). We realize that the formal comment period for the proposed modifications to the PGP ended on June 1. Unfortunately, the Network only became aware of the proposed changes after the deadline had passed. We hope that you will still take our comments into consideration.

We believe the proposal to alter the way dredging projects are viewed under the PGP has the potential for serious negative environmental impact to Massachusetts and Cape Cod Bays. We believe this potential threat merits close examination by the Corps of Engineers ("Corps") and appropriate changes to the plans prior to finalizing the new PGP. We are, therefore, submitting the following comments.

Under the present PGP, any dredging project involving open water disposal or affecting special aquatic sites falls into Category III, i.e. an individual permit review is required. The proposed modifications would allow new dredging projects up to 10,000 cubic yards and **all** maintenance dredging to forego the currently mandated public notice and comment process. In addition, they would also allow ocean disposal, as long as the Corps and the EPA have determined the suitability of the material for open ocean disposal. We do not believe that the disposal of large quantities of materials, some of which will contain elevated levels of contaminants, constitutes "minimal-impact" work," as stated in the Corps' public notice.

The Network is particularly troubled by the focus on the Massachusetts Bay Disposal Site (MBDS) for disposing of large quantities of maintenance-dredged materials that will not "see the light of day" as part of a public comment process. The MBDS is adjacent to Stellwagen Bank, the nation's newest marine sanctuary, an area not only rich in marine life, but also vitally important to the region's fishermen. The possibility of diminishing the levels of public participation and oversight in disposing

of dredged materials at the MBDS by the use of the proposed PGP is fundamentally worrisome.

As you may be aware, the designation of the MBDS was not without public controversy. Other projects, such as the planned Boston Harbor Navigation Improvement project (BHNIP) and the construction of the MWRA outfall pipe have increased the public's concern over the role of the MBDS and the health of Massachusetts and Cape Cod Bays. According to the Corps' own August 1993 press release, the PGP is meant for "minor, noncontroversial work." Clearly, any work involving disposal at the MBDS does not fall into this category.

According to Section 104 of the Marine Protection, Research and Sanctuaries Act (MPRSA), all information connected with a permit for ocean disposal, including general permits, must be made available to the public as a matter of public record. If there is no public notice, this aspect of the MPRSA will essentially be circumvented.

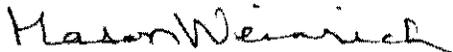
We are not swayed by arguments that only "clean material" would be included under the PGP. The determination of "suitability" is not, at present, an exact science. It is possible for contaminants that do not result in acute toxicity to bioaccumulate, increasing in concentration as they make their way up the marine food web and resulting in significant mortality and/or affecting human health. Yet, because of differences in interpretation and other factors, these sediments may be labelled "suitable" for ocean disposal. The fact is that "suitable" does not necessarily mean "clean." The cumulative effects of large volumes of unclean material poses a threat to the marine ecosystem, Stellwagen Marine Sanctuary, and, ultimately, to public health.

In Boston Harbor alone, most of the 6.1 million cubic yards of materials to be maintenance-dredged from the Main Ship Channel and tributary channels over the next 50 years will be composed of silts which are likely to be contaminated. This fact increases the likelihood that large quantities of maintenance material with elevated levels of contaminants will fall into the gray area of suitability determination and potentially be disposed of at the MBDS and other ocean sites.

Public confidence regarding agency decisions about these materials cannot be maintained without public notice of each maintenance and new dredging project involving open water disposal, despite the delay such notice and review would require. In order to protect our marine and coastal resources, it is our view that any revisions to the PGP should be aimed at making it more, not less, difficult to dispose of sediments containing toxics in the open ocean.

Thank you very much for your attention to this matter.

Sincerely,



Mason Weinrich, Chair
Coastal Advocacy Network

Coastal Advocacy Network

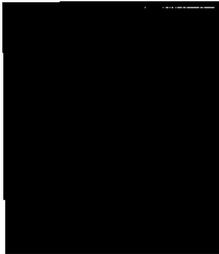
Stephan Nofield, Bays Legal Fund

Russell DeConti, Center for Coastal Studies

Mason Weinrich, Cetacean Research Unit

Bob Loring, Clean Water Action

Mark Rasmussen, Coalition for Buzzards Bay
Peter Shelley, Conservation Law Foundation
Dave Wiley, International Wildlife Coalition
Roger Stern, Massachusetts Bay Marine Studies Consortium
Robert Murray, Massachusetts Toxics Campaign
Robert Buchsbaum, Massachusetts Audubon Society
Priscilla Chapman, New England Sierra Club
Mettie Whipple, Plymouth First
Mary Loebig, Stop The Outfall Pipe
Jodi Sugerman, Save the Harbor/Save the Bay



Save the Harbor Save the Bay

Founded 1986

BOARD OF DIRECTORS

BETH NICHOLSON
Chairperson

June 13, 1994

BETSY JOHNSON
President

Monica J. Stillman
U.S. Army Corps of Engineers
New England Division
424 Trapelo Road
Waltham, MA 02254-9149

ROB MOIR
Vice President

PETER SHELLEY, ESQ.
Treasurer/Clerk

NANCY ANDERSON RE: File No. 1993-01040 - Modifications to Massachusetts General Permit

RICH DELANEY Dear Ms. Stillman:

JOHN DINGA Save the Harbor/Save the Bay is a citizen-based non-profit organization dedicated to the
JAMIE FINDLAY protection and promotion of Boston Harbor and Massachusetts Bay. I am writing to you in
PAUL FOSTER regards to proposed changes to the Massachusetts Programmatic General Permit (PGP). I
SHEILA LYNCH realize that the formal comment period for the proposed changes ended June 1.
ROBERT SPENCER Unfortunately, Save the Harbor/Save the Bay has only just been made aware of the
proposed changes. We are, however, very concerned about the potential serious
environmental impacts the modifications would have on Boston Harbor and Massachusetts
Bay.

NANNETTE TERRY Under the present PGP, any dredging project involving open water disposal or affecting
MARCIE TYRE special aquatic sites falls into Category III, *i.e.* an individual permit review is required.
HONORARY DIRECTOR Proposed modifications would allow new dredging projects up to 10,000 cubic yards and
all maintenance dredging to forego the currently mandated public notice and comment
process and allow ocean disposal (as long as the Corps and the EPA deem the sediments as
suitable) at the Massachusetts Bay Disposal Site (MBDS).

PAUL GARRITY, ESQ.,
Honorary Chairperson The MBDS is adjacent to the Stellwagen Bank National Marine Sanctuary, one of the most
WILLIAM B. GOLDEN, ESQ. important natural resources in Massachusetts Bay. We are completely opposed to the
IAN MENZIES disposal of large quantities of maintenance-dredged materials at the MBDS without any
public participation and oversight. Further, we are not swayed by arguments that only
"clean material" would be included under the PGP. Suitable does not necessarily mean
clean. Sediments laced with minor amounts of contaminants which do not cause significant
STAFF mortality may be considered "suitable" for ocean disposal, especially if there is no public
BRUCE BERMAN monitoring of the characterization process. These contaminants can bioaccumulate to
BayWatch Director increasing concentrations as they move up the food web. In addition, there are many
JANEY KEOUGH questions about how different contaminants react with one another. The cumulative effect
Operations Manager of large volumes of material, even slightly contaminated, can ultimately pose serious threats
JODI SUGERMAN to the marine ecosystem, Stellwagen Bank National Marine Sanctuary, and the public
Policy Director health.

JUN 15 1994

To protect our marine resource, we feel that any revisions to the PGP should be aimed at making it more, not less, difficult to to dispose of sediments in the open ocean.

Thank you for the opportunity to make these comments beyond the formal deadline.

Sincerely,

A handwritten signature in black ink, appearing to read "Jodi A.", followed by a horizontal line extending to the right.

Jodi Sugerman
Policy Director



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
NORTHEAST REGION
One Blackburn Drive
Gloucester, MA 01930

June 6, 1994

William F. Lawless
Chief, Regulatory Division
U.S. Army Corps of Engineers
424 Trapelo Road
Waltham, MA 02254-9149

Dear Mr. Lawless:

This is in reference to the Corps' proposal to revise and reissue the Massachusetts Programmatic General Permit (PGP) for minimal impact projects in Massachusetts, as described in Public Notice #1993-01040 dated May 3, 1994. We offer the following comments on the proposed modifications, as well as other aspects of the PGP.

Proposed Modifications to the PGP

(a) Bank Stabilization in Tidal and Navigable Waters. We have no objection to allowing the repair of existing, currently serviceable seawalls, bulkheads, revetments, and other bank stabilization structures under the non-reporting Category I. We agree that such projects should qualify for the PGP provided there is no expansion in size and no change in use.

New coastal armoring and bank stabilization projects have the potential to cause extensive environmental impacts, including both habitat loss in the footprint of fill and sedimentation and/or erosion problems in surrounding areas. Therefore, we believe these projects should fall under Category III and should be authorized only through individual permits.

We would have no objection to including under Category II the replacement of previously-authorized but non-serviceable bank stabilization projects under 1 acre in size. This would be consistent with the treatment of other previously-authorized structures or fill under the PGP, and would allow such projects to be screened to confirm that they entail only minimal impacts.

(b) Dredging with Open-Water Disposal. We recommend that dredging projects with open-water disposal continue to be authorized by individual permit only. Although the Corps and the federal resource agencies have recently implemented new technical coordination procedures for ocean disposal projects, we remain concerned that sufficient mechanisms are not in place to insure that these projects will result in only minimal impacts. Our concerns include verifying that maintenance dredging is, in fact,



JUN 13 1994

"maintenance"; conducting adequate resource assessments for both maintenance and new dredging sites; confirming that alternatives to ocean disposal have been thoroughly evaluated; and reaching agreement among all parties (including NMFS and the Stellwagen Bank National Marine Sanctuary) that materials are suitable for ocean disposal.

(c) Beach Nourishment. We do not object to including under the PGP maintenance dredging projects of less than 1000 c.y. with disposal of suitable material through beach nourishment. However, we recommend screening such projects under Category II rather than authorizing them under the non-reporting Category I. These types of projects require at least an initial review by NMFS and the other federal agencies to verify that proposed disposal sites are appropriate for beach nourishment and that the dredged materials are suitable for this purpose.

(d) Time of Year Restrictions. We recommend maintaining the current seasonal restriction in Condition 17 of the PGP.

(e) Dam Safety / Hazardous Materials Clean-up. We have no objection to allowing these Massachusetts Wetlands Protection Act "Limited Projects" to be authorized under Category II.

(f) Activities Associated with Enforcement Actions. We support adding a condition to clarify that the PGP applies to single and complete projects only, particularly for pending Corps enforcement cases. We recommend defining in this condition what types of activities are considered to be "associated" with an ongoing enforcement action (e.g., same applicant, same property, or some other test?).

Additional Suggestions for the PGP

We recommend adding the following condition to the PGP:

"Seasonal Floats. Seasonal floats and other structures shall be stored on uplands above the mean high water line."

This type of condition has been included in previous general permits and Letters of Permission. We believe such language is necessary to discourage applicants from storing floats on salt marshes and other valuable aquatic habitats.

In Condition 8, we suggest the following language for the first sentence:

"No activity may be authorized under this general permit which may affect a threatened or endangered species or species proposed for such designation... or which would result in any other violation of Section 9 of the ESA protecting threatened and endangered species of plants and animals."

This change more accurately reflects the "may affect" (as opposed to "likely to jeopardize") threshold for Endangered Species Act

Section 7 consultations under 50 CFR Part 402. It also clarifies the types of effects to listed species which would not be authorized by the PGP.

In the Definition of Categories Table, the Corps proposes to authorize under Category II up to one acre of temporary salt marsh fill or excavation and backfill. Such disturbances in salt marshes, even on a temporary basis, can have long term adverse effects on marsh ecology. The placement of fill material can compact salt marsh peat, permanently altering the hydrology and vegetative composition of the marsh. Such impacts would clearly exceed the "minimal impact" standard for authorization under the PGP, and we would routinely recommend individual permit review for such projects. Therefore, we recommend that you omit this item from the PGP entirely. Alternatively, if the Corps sees an advantage to handling special purpose projects (e.g., limited pipeline or cable crossings of salt marshes) through the screening process, we recommend that you develop (in consultation with the federal resource agencies) a more narrowly defined threshold for screening such projects.

In the description of Category I dredging in the Definition of Categories table, we recommend changing the text to read "...limited to dredging and disposal operations conducted between Nov. 1 and Jan. 15 in any year."

We recommend changing the description of Category I moorings in the Definition of Categories table as follows:

"Private, non-commercial, non-rental, single boat moorings, not associated with any boating facility, not positioned over vegetated shallows (5), and located in water of sufficient depth to ensure that moored vessels do not rest on the bottom at low tide."

Although enforcement of the vegetated shallows condition may be difficult, this provision would serve as a deterrent for applicants who might otherwise locate moorings in eelgrass beds. The provision for sufficient water depth would address situations (more common on the North Shore than on Cape Cod) where moorings are placed in extremely shallow water and boats abrade the bottom at low tide.

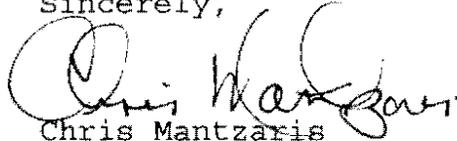
Piers and floats located adjacent to (but not necessarily over) eelgrass beds often lead to indirect resource impacts due to boating activity and shading. Therefore, we recommend changing the description of Category I piers and floats by using the words "not positioned within 50 feet of vegetated shallows" instead of "not positioned over vegetated shallows".

We recommend deleting the words "or fill" from the "fish and wildlife harvesting structures" condition in the Definition of Categories table (last page, Category I). This provision is intended to clarify that deployment of lobster traps, crab pots,

and similar devices is allowed in the non-reporting category. However, we cannot envision a situation where fill would be required for normal fishing operations. We recommend handling any necessary fill for such projects under other appropriate provisions of the PGP.

Thank you for the opportunity to comment on the proposed PGP. If you have any questions, please contact Jonathan Kurland at 508/281-9204.

Sincerely,



Chris Mantzaris
Acting Chief, Habitat and
Protected Resources Division

cc: Doug Thompson - EPA
Vern Lang - USFWS
MA CZM
MA DMF



Conservation Law Foundation

June 1, 1994

Monica J. Stillman
U.S. Army Corps of Engineers
New England Division
424 Trapelo Road
Waltham, MA 02254-9149

RE: File No. 1993-01040 - Modifications to Mass. Programmatic
General Permit

Dear Ms. Stillman:

We are writing to you with respect to the changes proposed to the Massachusetts Programmatic General Permit (PGP) as part of the reissuance process.

The Conservation Law Foundation objects to the proposal to allow new dredging projects up to 10,000 cubic yards and all maintenance dredging to forego the currently mandated public notice and comment process and to allow ocean disposal, as long as the Corps of Engineers ("Corps") and the EPA have determined the suitability of the material for open ocean disposal. We do not believe that the disposal of large quantities of materials, some of which will contain elevated levels of contaminants, constitutes "minimal-impact work."

We are particularly troubled by the focus on the Massachusetts Bay Disposal Site (MBDS) for disposing of large quantities of maintenance-dredged materials that will not "see the light of day" as part of a public comment process. The MBDS is adjacent to Stellwagen Bank, the nation's newest marine sanctuary, an area not only rich in marine life, but also vitally important to the state's fishermen. The possibility of diminishing the levels of public participation and oversight in disposing of dredged materials at the MBDS is a fundamentally worrisome one.

JUN 2 1994

Conservation Law Foundation

As you may be aware, the designation of the MBDS was not without public controversy. Other projects such as the planned Boston Harbor Navigation Improvement Project (BHNIP) and the construction of the MWRA outfall pipe have increased the public's concern over the role of the MBDS and the health of Massachusetts Bay. The public must be kept aware of all projects that could have an impact on our marine resources -- certainly the disposal of large quantities of dredged materials is one of these.

According to Section 104 of the Marine Protection, Research and Sanctuaries Act (MPRSA), all information connected with a permit for ocean disposal, including general permits, must be made available to the public as a matter of public record. If there is no public notice, this aspect of the MPRSA will essentially be circumvented.

We are not swayed by arguments that only "clean material" would be included under the PGP. The determination of "suitability" is not at present an exact science. It is possible for contaminants that do not result in significant mortality to bioaccumulate, increasing in concentration as they make their way up the marine food web. Yet because of differences in interpretation and other factors, these sediments may be labelled "suitable" for ocean disposal. The fact is that "suitable" does not necessarily mean "clean." The cumulative effects of large volumes of unclean material poses a threat to the marine ecosystem, Stellwagen Marine Sanctuary, and, ultimately, to public health.

Although the Corps has stated that less than 5% of annual nationwide dredging is unsuitable for unconfined ocean disposal, in Massachusetts, a much larger percentage is contaminated. Nearly one third of the volume to be dredged in the BHNIP are contaminated silts. Most of the 4.4 million cubic yards of maintenance dredged materials expected in Boston Harbor over the next 50 years will be composed of silts and are likely to be contaminated. This fact increases the likelihood that large quantities of maintenance material with elevated levels of contaminants will fall into the gray area of the suitability determination and risk being disposed of at the MBDS and other ocean sites. Public confidence regarding agency decisions about these materials cannot be maintained without public notice of each maintenance dredging project.



Conservation Law Foundation

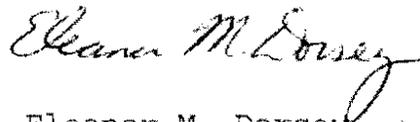
Finally, we do not see a sufficient emphasis on "beneficial use" in the PGP. If dredged materials are indeed "clean," they should be reserved for beneficial use wherever possible. Any revisions to the PGP should be aimed at making it more, not less, difficult to dispose of sediments in the open ocean.

Thank you very much for your attention to this matter.

Sincerely,



Grace I. Perez
Science Fellow



Eleanor M. Dorsey
Staff Scientist





NATIONAL MARINE FISHERIES SERVICE
NORTHEAST REGION
HABITAT AND PROTECTED RESOURCES DIVISION
ONE BLACKBURN DRIVE
GLOUCESTER, MA 01930-2298
FAX # (508) 281-9301

DATE: 6/1/94 4 PAGES TO FOLLOW

FROM: Jonathan Kurland (F/NEO2)

PHONE: 508/281-9204

TO: MONICA STILLMAN, ACOE

FAX:

Monica -

HERE'S A DRAFT OF OUR COMMENTS ON THE PGP. YOU SHOULD
RECEIVE A SIGNED COPY IN A FEW DAYS. IF YOU HAVE ANY QUESTIONS,
PLEASE CALL.

- Jon

9-26-94: Notes added by
M. Stillman per discussion
with Jon Kurland.

June 1, 1994

William F. Lawless
Chief, Regulatory Division
U.S. Army Corps of Engineers
424 Trapelo Road
Waltham, MA 02254-9149

Dear Mr. Lawless:

This is in reference to the Corps' proposal to revise and reissue the Massachusetts Programmatic General Permit (PGP) for minimal impact projects in Massachusetts, as described in Public Notice #1993-01040 dated May 3, 1994. We offer the following comments on the proposed modifications, as well as other aspects of the PGP.

Proposed Modifications to the PGP

(a) **Bank Stabilization in Tidal and Navigable Waters.** We have no objection to allowing the repair of existing, currently serviceable seawalls, bulkheads, revetments, and other bank stabilization structures under the non-reporting Category I. We agree that such projects should qualify for the PGP provided there is no expansion in size and no change in use.

Our change
OK.

New coastal armoring and bank stabilization projects have the potential to cause extensive environmental impacts, including both habitat loss in the footprint of fill and sedimentation and/or erosion problems in surrounding areas. Therefore, we believe these projects should fall under Category III and should be authorized only through individual permits.

C2M at
JP. a
good idea.

We would have no objection to including under Category II the replacement of previously-authorized but non-serviceable bank stabilization projects under 1 acre in size. This would be consistent with the treatment of other previously-authorized structures or fill under the PGP, and would allow such projects to be screened to confirm that they entail only minimal impacts.

(b) **Dredging with Open-Water Disposal.** We recommend that dredging projects with open-water disposal continue to be authorized by individual permit only. Although the Corps and the federal resource agencies have recently implemented new technical coordination procedures for ocean disposal projects, we remain concerned that sufficient mechanisms are not in place to insure that these projects will result in only minimal impacts. Our concerns include verifying that maintenance dredging is, in fact,

No
change.

"maintenance"; conducting adequate resource assessments for both maintenance and new dredging sites; confirming that alternatives to ocean disposal have been thoroughly evaluated; and reaching agreement among all parties (including NMFS and the Stellwagen Bank National Marine Sanctuary) that materials are suitable for ocean disposal.

(c) **Beach Nourishment.** We do not object to including under the PGP maintenance dredging projects of less than 1000 c.y. with disposal of suitable material through beach nourishment. However, we recommend screening such projects under Category II rather than authorizing them under the non-reporting Category I. These types of projects require at least an initial review by NMFS and the other federal agencies to verify that proposed disposal sites are appropriate for beach nourishment and that the dredged materials are suitable for this purpose.

No Change - screened.

(d) **Time of Year Restrictions.** We recommend maintaining the current seasonal restriction in Condition 17 of the PGP.

No change to PGP. ✓

(e) **Dam Safety / Hazardous Materials Clean-up.** We have no objection to allowing these Massachusetts Wetlands Protection Act "Limited Projects" to be authorized under Category II.

No change. to PGP.

(f) **Activities Associated with Enforcement Actions.** We support adding a condition to clarify that the PGP applies to single and complete projects only, particularly for pending Corps enforcement cases. We recommend defining in this condition what types of activities are considered to be "associated" with an ongoing enforcement action (e.g., same applicant, same property, or some other test?).

No change. to PN.

Additional Suggestions for the PGP

We recommend adding the following condition to the PGP:

"Seasonal Floats. Seasonal floats and other structures shall be stored on uplands above the mean high water line."

added.

This type of condition has been included in previous general permits and Letters of Permission. We believe such language is necessary to discourage applicants from storing floats on salt marshes and other valuable aquatic habitats.

In Condition 8, we suggest the following language for the first sentence:

"No activity may be authorized under this general permit which may affect a threatened or endangered species or species proposed for such designation... or which would result in any other violation of Section 9 of the ESA protecting threatened and endangered species of plants and animals."

Corps = too restrictive.

NMFS: "may affect"

This change more accurately reflects the "may affect" (as opposed to "likely to jeopardize") threshold for Endangered Species Act

requires a biological assessment - involved.

"No effect" could: GP.

Section 7 consultations under 50 CFR Part 402. It also clarifies the types of effects to listed species which would not be authorized by the PGP.

In the Definition of Categories Table, the Corps proposes to authorize under Category II up to one acre of temporary salt marsh fill or excavation and backfill. Such disturbances in salt marshes, even on a temporary basis, can have long term adverse effects on marsh ecology. The placement of fill material can compact salt marsh peat, permanently altering the hydrology and vegetative composition of the marsh. Such impacts would clearly exceed the "minimal impact" standard for authorization under the PGP, and we would routinely recommend individual permit review for such projects. Therefore, we recommend that you omit this item from the PGP entirely. Alternatively, if the Corps sees an advantage to handling special purpose projects (e.g., limited pipeline or cable crossings of salt marshes) through the screening process, we recommend that you develop (in consultation with the federal resource agencies) a more narrowly defined threshold for screening such projects.

No change -
ok.

In the description of Category I dredging in the Definition of Categories table, we recommend changing the text to read "...limited to dredging and disposal operations conducted between Nov. 1 and Jan. 15 in any year."

(did not discuss.)

We recommend changing the description of Category I moorings in the Definition of Categories table as follows:

"Private, non-commercial, non-rental, single boat moorings, not associated with any boating facility, not positioned over vegetated shallows (5), and located in water of sufficient depth to ensure that moored vessels do not rest on the bottom at low tide."

Can we handle on a waterway basis? eg. w/ HM. He will talk to staff that made suggestion.

Although enforcement of the vegetated shallows condition may be difficult, this provision would serve as a deterrent for applicants who might otherwise locate moorings in eelgrass beds. The provision for sufficient water depth would address situations (more common on the North Shore than on Cape Cod) where moorings are placed in extremely shallow water and boats abrade the bottom at low tide.

Piers and floats located adjacent to (but not necessarily over) eelgrass beds often lead to indirect resource impacts due to boating activity and shading. Therefore, we recommend changing the description of Category I piers and floats by using the words "not positioned within 50 feet of vegetated shallows" instead of "not positioned over vegetated shallows".

We would add vessels; hesitant to add 50' limit. How can we fight up "eelgrass habitat" or "likely resource area"? Talk to Staff

We recommend deleting the words "or fill" from the "fish and wildlife harvesting structures" condition in the Definition of Categories table (last page, Category I). This provision is intended to clarify that deployment of lobster traps, crab pots,

per NWPs;
deminimis fill ok
clam digging structures as fill

and similar devices is allowed in the non-reporting category. However, we cannot envision a situation where fill would be required for normal fishing operations. We recommend handling any necessary fill for such projects under other appropriate provisions of the PGP.

Thank you for the opportunity to comment on the proposed PGP. If you have any questions, please contact Jonathan Kurland at 508/281-9204.

Sincerely,

Chris Mantzaris
Acting Chief, Habitat and
Protected Resources Division

cc: Doug Thompson - EPA
Vern Lang - USFWS
MA CZM
MA DMF

COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF ENVIRONMENTAL AFFAIRS
DEPARTMENT OF ENVIRONMENTAL PROTECTION
OFFICE OF GENERAL COUNSEL

FACSIMILE TRANSMITTAL FORM

DATE: June 1, 1994

TIME: 5:45

TO:

Monica Stillman

AGENCY:

COE

FAX #

647-8303

FROM:

Fam Harvard

DEP

SUBJECT:

PEP

NUMBER OF PAGES INCLUDING COVER SHEET

2

SHOULD A PROBLEM OCCUR IN TRANSMITTAL PLEASE CALL,
AT (617) 292-5568

TO SEND A FAX CALL (617) 338-5511

NEBO - 935 6393

CRO - (508) 792-7621

BOEA - 727-2754

WRO - (413) 784-1149

SEBO - (508) 947-6537

EPD - 727 9665

ATTY GEN. - 727-3251

CRIM. AG'S OFFICE - 727-5755



Commonwealth of Massachusetts
Executive Office of Environmental Affairs

Department of Environmental Protection

William F. Weld
Governor

Trudy Case
Secretary, EDEA

Thomas B. Powers
Acting Commissioner

June 1, 1994

Ms. Monica J. Stillman
U.S. Army Corps of Engineers
New England Division
424 Trapelo Road
Waltham, MA 02254-9149

Dear Ms. Stillman:

The Department of Environmental Protection has reviewed the Public Notice dated May 3, 1994 (File No: 1993-01040) on the proposed reissuance of the Massachusetts Programmatic General Permit (PGP). As you know, the Department supports reissuance of the PGP and plans further discussions with the Corps on the proposed modifications later this month. In addition, the Department is accepting public comment on its proposed 401 Water Quality Certification regulations until June 20. Because of the coordination of the PGP with the Department's 401 program, as well as its statutory authority to certify the PGP, the Department expects to continue to actively participate in the process of finalizing the PGP. The Department appreciates the willingness of the Corps to accept our comments while engaging in discussions of the PGP beyond the close of the formal comment period.

The Department looks forward to the reissuance of the PGP concurrent with the effective date of the revised 401 regulations this fall. The Department is committed to the success of the PGP and welcomes the opportunity to continue this cooperative effort by the federal and state environmental agencies. The PGP and the 401 program together represent our shared goal of simplifying the permitting process while enhancing environmental protection.

Sincerely,

Pamela D. Harvey

Pamela D. Harvey
Acting Senior Deputy General
Counsel

PDH/dc

cc: Carl Dierker, Robert GollEDGE

One Winter Street • Boston, Massachusetts 02108 • FAX (617) 558-1049 • Telephone (617) 292-5500



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION I

J.F. KENNEDY FEDERAL BUILDING, BOSTON, MASSACHUSETTS 02203-2211

May31, 1994

William F. Lawless, P.E.
Chief, Regulatory Directorate
U.S. Army Corps of Engineers
New England Division
424 Trapelo Road
Waltham, MA 02254-9149

Re: Public Notice No. 1993-01040

Dear Mr. Lawless:

This letter is in response to a public notice dated May 3, 1994 concerning proposed modifications to the Massachusetts Programmatic General Permit (MA PGP).

The EPA has the following objections to several of the proposed modifications due to environmental and procedural concerns as specifically discussed below.

(a) Bank Stabilization

We have no objection to allowing the repair of coastal armoring and navigable rivers bank stabilization in the non-reporting category, Category I, however, we do object to allowing the construction of new coastal armoring and navigable rivers bank stabilization in the screening Category II. New coastal and navigable rivers bank stabilization projects should remain in Category III. This would retain the customary individual federal agency inspection of these projects in order to adequately assess the potential for impacts to special aquatic sites.

New bank stabilization and coastal armoring projects in general usually have associated impacts such as loss of important habitat associated with riverine banks, loss of intertidal zones, mudflats, and shellfish beds in the coastal environment, direct or indirect damage to wetlands in both coastal and freshwater environments and potential downstream or downdrift impacts in the coastal environment. Because of the potential for adverse impacts to important aquatic resources, these projects should remain in Category III.

(b) Dredging

EPA objects to the proposed modification of the MA PGP which would eliminate issuing public notices for maintenance dredging and new dredging up to 10,000 cubic yards at the Massachusetts Bay Disposal Site ("MBDS").



In a letter dated July 10, 1993, EPA expressed concern with a previous version of the MA PGP. EPA continues to oppose issuance of a PGP for ocean dumping projects less than 10,000 cubic yards at the MBDS. (The Braintree Yacht Club and Perkin's Marina projects exemplify cases where volumes less than 10,000 cubic yards may cause environmental harm.)

The designation of the Stellwagen Bank National Marine Sanctuary ("NMS") has served to heighten public awareness, and therefore it is reasonable to expect additional public interest and comment letters on ocean disposal projects at the MBDS in the future. Strong public interest and concern about EPA's designation of the MBDS also supports the view that the public will continue to be interested in ocean dumping at the MBDS.

The Congressional hearings and studies concerning past use and current conditions at the Industrial Waste Site, the designation of Stellwagen Bank as a NMS, and the designation of MBDS have all played a contributing role in heightening public awareness and interest in use of the MBDS. While there may be less public interest in smaller projects, through issuance of public notices the government allows members of the public to determine whether they wish to file comments on a particular project. Not even issuing the public notices seems calculated to deprive the public of that right.

We understand that EPA's role in the process remains unchanged. However, EPA together with the Corps, made several public commitments during the designation of the MBDS that should be upheld (see Section 5.2 of the DEIS and 4.2 of the FEIS).

The current practice of issuing public notices on ocean dumping projects - regardless of their size - is consistent with § 104 of the Marine Protection, Research, and Sanctuaries Act and EPA's ocean dumping regulations at 40 CFR §§ 225.2. EPA continues to believe that we should involve and inform the public in our regulatory decision-making. As a result, EPA does not support a change toward less public disclosure.

(c) Beach Nourishment

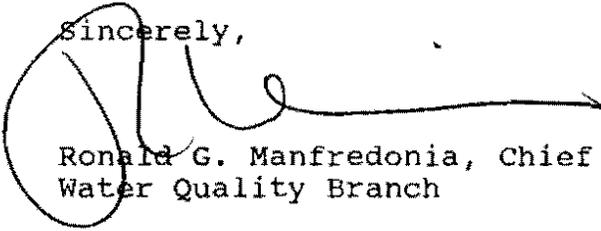
The proposed modification would allow beach nourishment with suitable material, in conjunction with the dredging projects that are defined under the non-reporting category (Category I). EPA objects to this modification due to concerns that such projects would have the potential to cause direct or indirect adverse impacts to eelgrass beds, other submerged aquatic vegetation, salt marshes, and intertidal areas supporting shellfish or other marine organisms. We do not believe it is appropriate to rely on the applicant to determine if disposal would affect special aquatic sites. These projects should remain in Category II so that the federal resource agencies can screen the applications

for aquatic resource area impacts. Furthermore, it is important for the federal agencies to review specific project grain size and chemical data to determine suitability for beach nourishment in any given project.

(d) Time-Of-Year Restrictions

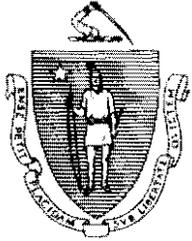
EPA objects to elimination of the time of year restriction for waterway crossings, in Condition 17. In order to protect anadromous fish, and minimize aquatic impacts associated with sedimentation and turbidity, stream crossing construction should continue to be conducted during the low flow period July 15 to October 1 whenever possible. The current procedure to screen those projects which cannot comply with this condition should be retained in order to adequately protect waterways and their associated aquatic habitat values.

Sincerely,



Ronald G. Manfredonia, Chief
Water Quality Branch

cc: John Kurland, NMFS, Gloucester, MA
Vern Lang, USFWS, Concord, NH
Deerin Babb-Brott, MCZM, Boston, MA



The Commonwealth of Massachusetts

AERONAUTICS COMMISSION

10 Park Plaza, Room 6620
Boston, Massachusetts 02116-3966

MAY 26 1994

DIRECTOR'S OFFICE
(617) 973-8881
FACSIMILE
(617) 973-8889

CHAIRMAN
SHERMAN W. "WHIP" SALTMARSH, JR.

VICE CHAIRMAN
JAMES M. SLATTERY

COMMISSIONERS
HENRY J. CROUSE
JAMES C. FULLERTON
WILLIAM "T" THOMPSON

May 25, 1994

U.S. Army Corps of Engineers
Regulatory Division
424 Trapelo Road
Waltham, Massachusetts 02254-9149
Attn: Ms. Monica Stillman

RE: File # 1993-01040

Dear Ms. Stillman:

This letter is in response to the "Public Notice" issued by the Corps on May 3, 1994 wherein several changes to the Massachusetts Programmatic General Permit (PGP) are proposed and public comment sought.

The Commission was surprised to find that the "limited project" provision for its tree clearing projects in wetlands was not included as a proposed change to the PGP. Currently all tree clearing projects affecting one acre or more of wetland fall under Category III, "Individual Permit Required". It is the Commission's desire that these limited projects be included under the Category II, Screened PGP, category.

As you know, the Massachusetts Aeronautics Commission, Massport, the Massachusetts Department of Environmental Protection, and the Massachusetts Executive Office of Environmental Affairs expended great effort and expense to study the issues surrounding these types of projects. The investigation is documented as the "Final Generic Environmental Impact Report (GEIR) for Vegetation Removal in Wetlands at Public Use Airports", EOE #8978, dated August 31, 1993. In part, the GEIR documents what is generally felt to be an overestimate of the amount of wetland resources to be potentially affected; prescribes administrative and scientific procedures to evaluate the effects on resource functions and values; outlines a comprehensive process of selecting impact mitigation measures to lessen or eliminate any negative impact to the resource; and outlines a framework for impact evaluation which tracks the success of the various methods used so that future projects may benefit from the experience. When followed strictly the GEIR is a comprehensive planning tool which provides the highest possible level of protection to our natural resources.

The GEIR itself along with the "limited project" provisions of the Mass. Wetlands Protection Act, 310 CMR 10.24(7)(c)(5) and 310 CMR 10.53 (3)(n), requires project planners to follow rigorous guidelines in their evaluation of resources, tree clearing methods, impact mitigation measures, and resource evaluation techniques. These requirements are intended to provide an uncompromising level of protection for our natural resources and the public.

Including these projects in Category II would in all cases provide to the Corps an assurance that it would review each project individually for its responsiveness to the regulations, and to the needs of the natural environment.

Two other projects listed in the "Notice" are also new limited projects under the Wetlands Protection Act (dam safety and cleanup of oil and/or hazardous materials). In each case the notice enumerates that public safety and health concerns are the primary reasons for the nomination of these projects for Category II. We concur that these types of projects should be allowed to proceed before they become emergencies or constitute serious public health threats.

In our case, a principal motivation behind the drafting of the GEIR and the adoption of the new limited project provision is Public Safety. The rationale behind the GEIR is instructive, "When the obstructing vegetation is located in wetlands, its removal poses a two fold problem. First, from an ecological standpoint, vegetation removal can impact the functions and values of wetland areas if conducted improperly. Second from a regulatory standpoint, lengthy and costly environmental reviews continuing for up to 2 years are required for extensive vegetation removal in wetlands. A solution to this problem is urgently needed that will balance the need to ensure public safety at Massachusetts airports with the need to minimize ecological impacts to the state's wetland resources." (underlining is our own for emphasis). Strict adherence to the procedures set forth in the GEIR assures that this noble objective will be consistently achieved.

Based upon this, the Commission respectfully requests that you include the tree clearing in wetland's limited projects under the Category II, Screening PGP program. In so doing, the Corps will contribute to the lessening of the permitting burden on local communities, and significantly enhance the public safety without sacrificing the highest level of protection for the environment.

Mr. Armand Dufresne is a consulting environmental planner to the Commission and he is available to assist in this matter in whatever manner you feel is appropriate. This request is very important to the success of the Commission's goal to make all public use airports safe while maintaining the integrity of their natural environments.

Sincerely,


Stephen R. Muench
Acting Executive Director

cc: Karen Kirk Adams, ACOE
Laurie Cullen, Massport
Deborah Hadden, CDM
Robert Gollidge, DEP



United States Department of the Interior

FISH AND WILDLIFE SERVICE
New England Field Offices
22 Bridge Street, Unit #1
Concord, New Hampshire 03301-4986

Ref: 1993-01040

May 23, 1994

Mr. William Lawless, Chief
Regulatory Division
U.S. Army Corps of Engineers
424 Trapelo Road
Waltham, Massachusetts 02254

Dear Mr. Lawless:

This is in response to your May 3, 1994 Public Notice requesting comments on proposed revisions to the Massachusetts Programmatic General Permit (PGP).

We have reviewed the proposed modifications and offer the following comments:

- a. Bank Stabilization in tidal and navigable waters. We have no objection to placing the repair of existing, currently serviceable seawalls, bulkheads and other bank stabilization structures in the non-reporting category, Category I.

We believe that new coastal armoring and navigable water bank stabilization projects should remain in Category III because of the likelihood for individual and cumulative effects. We would not object if replacement or reconstruction of previously existing but currently unserviceable bank stabilization projects were placed in Category II to be consistent with other categories in the PGP. The threshold limits for fill should remain unchanged.

- b. Dredging. We recommend that dredging projects with open water disposal remain in Category III. Applicants proposing to use an ocean disposal (Section 103) site are required to demonstrate that there are no other practicable disposal sites available. Placing this class of projects in the screening category may encourage prospective applicants to overlook the disposal site alternative analysis. We are also concerned about the suitability of the material that is proposed for disposal at open water sites such as MBDS. The disposal site alternatives analysis and dredge material testing information are inherently complex and should be contained in an individual permit so that a careful review and evaluation can be performed.
- c. Beach Nourishment. Currently, dredging projects in both Category I and II require upland disposal. If Category I is opened up to include open water disposal for "beach nourishment" or other purposes, it is reasonable to conclude that requests would be received to do the same for Category II projects. "Beach nourishment" is an artform that lacks a well established or precise definition. Many applicants would likely construe a need for "beach nourishment" for the sake of obtaining a convenient disposal site. Dredging and disposal operations in the dynamic coastal area should not be undertaken

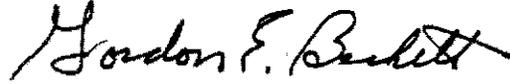
without some understanding of the coastal geological processes and local biological resources that may be affected. In the past, we have discovered that some "beach nourishment" projects involved the disposal of sandy material on top of rocky intertidal habitat. This practice resulted in the formation of a beach in the short term but at the expense of biologically productive hard substrate (rocky intertidal) communities. The recent Swampscott Harbor episode involving eelgrass beds provides ample evidence that stricter controls are needed for both dredging and disposal practices. For these reasons, we recommend that beach nourishment be deleted from consideration in Category I or II dredging projects.

- d. Time-of-year Restrictions. We recommend that the time-of-year (TOY) restrictions be retained in their current form. According to our records, only two or three projects have been processed as Level II projects because they could not comply with the standard TOY restrictions. In each of these cases, the applicants requested minor deviations before July 15 or after October 1. These were granted because of extenuating circumstances in each specific case. The TOY restriction seems to be working as intended and we can find no compelling reason to change the window at this time. For those projects that request deviations from the standard TOY restriction, the screening process provides the Service and others, the opportunity to determine site specific information for a more informed decision.
- e. Wetland Protection Act Limited Projects for dam safety or oil and/or hazardous material clean-up. We recommend that these Limited Projects follow the thresholds currently established for Levels II and III. In our view, it would be unwise to start making exceptions for particular classes of projects because this would only encourage other special interest groups to seek a similar accommodation. According to our records, only two limited projects involving dams have been processed under the screening category since the PGP went into effect. This very low occurrence rate demonstrates that no significant workload exists for this class of projects. Both classes of these Limited Projects have the potential to affect a significant acreage of wetlands and other waters through direct and secondary impacts. For these reasons, these and other Limited Projects should be processed according to the existing thresholds. If a true emergency situation were to develop for these or other projects, the Corps has the authority under 33 CFR 325.2(e)(4) to process the application in an expedited fashion.
- f. Enforcement Actions. We have no objection to this proposed modification.

We note that the PGP is being extended to October 31, 1994 to accommodate the state rulemaking process for the Section 401 regulations. The public comment period for the 401 rules is just getting started and will likely remain open for 60-90 days. Since the final 401 rules may affect the administration of the PGP, we recommend that the comment period for PGP modifications be extended until 30 days after the final 401 rules are issued. This action would not delay the Corps because the final PGP is administratively linked to the final 401 rules.

Questions concerning these comments should be directed to Mr. Vern Lang of this office at 603-225-1411.

Sincerely yours,

A handwritten signature in cursive script that reads "Gordon E. Beckett". The signature is written in black ink and is positioned above the typed name and title.

Gordon E. Beckett
Supervisor

[4] From: CHRISTINE GODFREY 5/10/94 12:44PM (1239 bytes: 21 ln)
To mailing list: #Everyone in Regulatory
Subject: Coordantion of SPGP, PGP

----- Message Contents -----

Several weeks ago I received a request from the agencies about slight changes to the SPGP/PGP screening procedures. These changes have been coordinated with the agencies and branch chiefs and approved by Bill. Please implement them as of your next screening meeting.

1. The agenices will fill out their own comments on the JP comment sheet at the meeting rather than having the PM record the agencies verbal comments. (If you typically do coordination over the phone, of course you may continue to record the verbal comments).

2. If you will be sending out a letter (request for add'l info, kick-out or verification of authorization) please copy furnish the agencies. I understand many of you are doing this anyway.

Thanks, Chris

Copy Furnished: Kyla Bennett, Mark Kern, Ed Reiner
Wendy Rosier, Phil Morrison
Jon Kurland, Mike Ludwig

By [Signature]

DATE: 05/09/94

PAGE: 3

MEMORANDUM FOR Chief, Regulatory Division *HL 5.9.94*

SUBJECT: Proposed Reissuance of Department of Army Flood Programmed General Permit, Commonwealth of Massachusetts.

1. We have reviewed the Public Notice, issued on 4/27/94, for the subject General Permit, for potential impacts to Federal navigation projects in Massachusetts and have the following comments:

a. At the end of the first sentence in Category I, add the word "Conditions" and the words "or any other factor of the public interest" should be inserted. This will allow for the inclusion of other special conditions that may be needed to reduce potential impacts to Federal projects.

b. Under "Definition of Categories" we suggest that item 2 include under category II the following statement: "Private, non-commercial, non-rental, single boat moorage not associated with any boating facility" (4. located with Federally constructed anchorage areas". The statement under category III should then include the words "except for private moorage authorized under category II located with Federally constructed anchorage areas". This will allow for an individual private moorage to be permitted in a Federal anchorage and also give the Corps the opportunity to review the application to ensure that the moorage will not be located in a channel or turning point.

c. Also under "Definition of Categories" we recommend that item 3 include under category II the following statement: "Any structure or pier that extends closer to the horizontal centerline of any Corps Federal navigation project than a distance of three times the project's authorized depth." This will give the Corps the opportunity to review the application to ensure access to the side slopes so that a Federal channel could be properly maintained.

2. If the General Permit is reissued, please forward a copy to Navigation Division.

[Signature]

J.G. BOUTILIER
Chief, Navigation Division

TELEPHONE OR VERBAL CONVERSATION RECORD

For use of this form, see AR 340-15; the proponent agency is The Adjutant General's Office.

DATE

May 4, 1994

SUBJECT OF CONVERSATION

MA PGP - Proposed Changes

INCOMING CALL

PERSON CALLING	ADDRESS	PHONE NUMBER AND EXTENSION
PERSON CALLED	OFFICE	PHONE NUMBER AND EXTENSION

OUTGOING CALL

PERSON CALLING	OFFICE	PHONE NUMBER AND EXTENSION
M. Stillman	Reg	x7862
PERSON CALLED	ADDRESS	PHONE NUMBER AND EXTENSION
Doug Thompson	EPA	565-4422

SUMMARY OF CONVERSATION

Left a message.

TELEPHONE OR VERBAL CONVERSATION RECORD For use of this form, see AR 340-15; the proponent agency is The Adjutant General's Office.		DATE
SUBJECT OF CONVERSATION TMA PGP- proposed changes		
INCOMING CALL		
PERSON CALLING	ADDRESS	PHONE NUMBER AND EXTENSION
PERSON CALLED	OFFICE	PHONE NUMBER AND EXTENSION
OUTGOING CALL		
PERSON CALLING M. Stillman	OFFICE Reg B	PHONE NUMBER AND EXTENSION 7862
PERSON CALLED Vern Lang	ADDRESS U.S. FWS	PHONE NUMBER AND EXTENSION 603 225 1411
SUMMARY OF CONVERSATION		
<p>PN just issued. I reviewed issues brought up for revisions. He'll get a copy from Phil.</p> <p>Open-water disposal: he is involved in meetings on suitability determinations - has concerns alternatives analysis required by Ocean Dumping Regs is ignored. Sends the wrong message if in PGP...</p> <p>EPA is working on draft regs for inland testing too - could get quite confusing.</p> <p>(MEPA/CZM issue: not always clear if MEPA required; categorical exclusions = yes; if ENF filed - may or may not need MEPA/CZM review.)</p> <p>I told him to provide comments on PN and general comments from his staff. I will send him a current RAMS report on final actions.</p>		

[5] From: MONICA STILLMAN 5/2/94 7:28AM (6023 bytes: 96 ln)
cc: MONICA STILLMAN
Subject: MA PGP

----- Message Contents -----

Monica - I was just wondering what your thoughts were on my comments. Ruth

Hello Ruth: I have been quite busy lately but hadn't ignored your comments. We are also extending the current PGP until the fall, when the DEP intends to be implementing new 401 regulations. So I don't have to complete revisions/evaluation of the PGP as soon as I had thought. Initial comments to your suggestions are provided below.

1) Somehow incorporate exceptions or special situations into the chart (I think a lot of people never get further than the chart). For example, the fact that subdivisions require an individual WQC, regardless of the extent of fill. (Yes, I know it is in the WQC regs). Also, fill not subject to the WPA. Similarly, specifically call out a bit of condition #17 that instream work must be 7/15-10/1 or is Category II.

We are going to revise the chart with the intent of simplifying it. We would like to avoid too many complexities, like cross-references, footnotes, etc. We will try to tie the text of the PGP and the Chart closer together, e.g., 401 and CZM requirements somehow indicated on the chart, etc.

2) Would it cause too much of a flap if certified vernal pools were made Category II, even if less than 5,000 sf?

Because certified vernal pools are ORWs that are regulated by both the state and DEP (individual WQC required) we will likely keep them in Cat. I - relying on state review. We recently discussed a proposal to tie into the 401 thresholds for our Cat. I (e.g., subdivisions, ORWs, etc.). ORWs are designated at the state level and initially we made a decision not to add our review for impacts less than 5,000 s.f. Without reviewing why each ORW was declared an ORW, we don't have any basis for more stringent review of projects in ORWs. Vernal pools are a little different, because we know up-front why they are designated as ORWs. However, in the interest of keeping the PGP simple, it is unlikely that we will call out vernal pools as a special category. Do you feel there is inadequate review at the state level? Also, a related question: is it likely that all vernal pools are waters of the U.S.? (Vegetated would be wetlands; if unvegetated, are they waters of the U.S.?)

3) What happens in cases where a subdivision was permitted by NW, PGP, or IP and now individual lot owners are filing NOIs for <5,000 sf fill? I suspect we are never notified because they are <5,000 sf. If I read the conditions correctly, that shouldn't happen, but.....! Also, how does it work for

projects permitted under NWS which now have fill going in on individual lots? It doesn't fit the last sentence of condition #5 because the original project (usually the stream and wetland crossings for subdivision roads) was issued a NW26 and/or NW14.

The problem of piecemealing lots within subdivisions is the same as it was formerly under NWP 26 and other NWPs. Ideally individual lot fills should not be occurring under Cat. I but it probably is in some cases. Condition 5 gives us the ability to intervene if we find out about such work. The DEP (WQC) files on subdivisions (including < 5,000 s.f. impacts) are very complete and indicate a thorough review. Occasionally some work related to subdivisions appears to be getting state approvals for impacts < 5,000 s.f. even though it is not single/complete project. (For example, central region DEP issued a WQC waiver for construction of a fire pond, for a residential development, without any info in file on the rest of the development.)

We intend to strengthen the language on single/complete work in the revised PGP - such as putting a strong message early in the text/procedures section.

NWPs are supposed to have applied to single-complete projects as well. Additional fills should not be occurring on a Nationwide project, under Cat. I of the PGP now. From my recollections, we have handled individual lot cases differently in the past; sometimes they have been permitted simply because an owner had no other option to use of his land. However, Mark M. had a case recently in RI where Bill said "No" to filling all wetlands on a house lot for development; lot was purchased a long time ago but did not have adequate uplands for development. I will have to check with Mark to find out the outcome of that case.

Ruth

Thank you for your comments; I will make a record of this information for my file. Let me know if you want to discuss any of these items.

Thanks--Monica

[6] From: MONICA STILLMAN 5/2/94 10:35AM (560 bytes: 12 ln)
cc: MONICA STILLMAN
Subject: MA PGP

----- Message Contents -----

MONICA

We should consider the revising the upper limit on spill cleanup in CAT II. A tanker spill, like the Route 93 spill, could easily involve more than an acre of clean up. Do we want to put the applicant through the IP procedures to clean up a spill? We have not had a spill lately by we will have one again.

Laurie

Responded May 2, 1994

TELEPHONE OR VERBAL CONVERSATION RECORD

For use of this form, see AR 340-15; the proponent agency is The Adjutant General's Office.

DATE

April ¹⁴ 1994

SUBJECT OF CONVERSATION

C2M; MA PGP

INCOMING CALL

PERSON CALLING	ADDRESS	PHONE NUMBER AND EXTENSION
PERSON CALLED	OFFICE	PHONE NUMBER AND EXTENSION

OUTGOING CALL

PERSON CALLING	OFFICE	PHONE NUMBER AND EXTENSION
M. Stillman	Reg.	7862
PERSON CALLED	ADDRESS	PHONE NUMBER AND EXTENSION
Jane Head	C2M	727-9530

SUMMARY OF CONVERSATION

left a message

TELEPHONE OR VERBAL CONVERSATION RECORD

For use of this form, see AR 340-15; the proponent agency is The Adjutant General's Office.

DATE

April 5, 1994

SUBJECT OF CONVERSATION

MA PGP - proposed changes

INCOMING CALL

PERSON CALLING	ADDRESS	PHONE NUMBER AND EXTENSION
PERSON CALLED	OFFICE	PHONE NUMBER AND EXTENSION

OUTGOING CALL

PERSON CALLING	OFFICE	PHONE NUMBER AND EXTENSION
M. Stillman	Reg. B	7862
PERSON CALLED	ADDRESS	PHONE NUMBER AND EXTENSION
Vern Lang	FWS	603-225-1411

SUMMARY OF CONVERSATION

In the field, call Wed.

[2] From: RUTH LADD 3/25/94 10:31AM (1580 bytes: 27 ln)
To: MONICA STILLMAN
cc: DENISE LEONARD
Subject: MA PGP

Ruth

Mar 25

----- Message Contents -----

These are thoughts I've had about possible modifications of the MA PGP:

1) Somehow incorporate exceptions or special situations into the chart (I think a lot of people never get further than the chart). For example, the fact that subdivisions require an individual WQC, regardless of the extent of fill. (Yes, I know it is in the WQC regs). Also, fill not subject to the WPA. Similarly, specifically call out a bit of condition #17 that instream work must be 7/15-10/1 or is Category II.

Classy
etc.

2) Would it cause too much of a flap if certified vernal pools were made Category II, even if less than 5,000 sf?

Vernal
pools
section 10

3) What happens in cases where a subdivision was permitted by NW, PGP, or IP and now individual lot owners are filing NOIs for <5,000 sf fill? I suspect we are never notified because they are <5,000 sf. If I read the conditions correctly, that shouldn't happen, but.....! Also, how does it work for projects permitted under NWs which now have fill going in on individual lots? It doesn't fit the last sentence of condition #5 because the original project (usually the stream and wetland crossings for subdivision roads) was issued a NW26 and/or NW14.

Subdiv
pieces

Ruth

Town of East Brookfield, Massachusetts
Conservation Commission
Municipal Building, East Brookfield 01515

Robert Baronoski, Chairman
Richard Magwood
Thomas LaMotte

Susan Allen, Clerk
Robert Vandale

March 4, 1994

Dept. of the Army
N.E. Division Corps of Engineers
ATTN: Christine Godfrey, Chief
Policy Analysis Branch, Regulatory Division
424 Trapelo Road
Waltham, MA 02254-9149

RE: Programmatic General Permit Documentation

Dear Ms. Godfrey,

The East Brookfield Conservation Commission would like to request 6 more copies, if possible, of the Programmatic General Permit Documentation. Thank you for your attention to this request.

Sincerely,



Susan Allen, Clerk
E.B. Conservation Commission

MAR 28 1994



DEPARTMENT OF THE ARMY
NEW ENGLAND DIVISION, CORPS OF ENGINEERS
424 TRAPELO ROAD
WALTHAM, MASSACHUSETTS 02254-9149

REPLY TO
ATTENTION OF

February 2, 1994

Regulatory Division
CENED-OD-R

Mr. Daniel S. Greenbaum, Commissioner
Executive Office of Environmental Affairs
Dept. of Environmental Protection
One Winter Street
Boston, Massachusetts 01108

Dear Mr. Greenbaum:

This letter is in reference to Commonwealth and Federal delineation of wetlands in Massachusetts. Corps of Engineers staff has been involved in the DEP task force over the past year with the common goal of modifying the state delineation method to become more consistent with the Federal method. Despite the considerable efforts of the task force, we are concerned that the draft regulations about to be published by DEP will fall short of this goal. I feel it is important to reiterate our position and the supporting rationale.

The Federal method is scientifically supportable and repeatable. It is widely accepted by the environmental community and the consulting community who furnish the bulk of the application materials to both our agencies and conservation commissions. Most other states in New England have either adopted the Federal method or are moving toward it. The burden on the regulated public of having to generate two separate lines is costly, time consuming, and scientifically insupportable. Adoption of the Federal line would significantly streamline the regulatory process and reduce associated costs.

The inconsistencies in our two lines also cause unnecessary problems in administration of the newly issued Massachusetts General Permit (GP). This innovative GP has received national recognition for improving both regulatory efficiency and environmental protection. The GP has offered major benefits to both our agencies and the general public, but the delineation differences pose an on going problem. The Corps now spends considerable staff time resolving delineation boundaries which could be more effectively spent on project evaluation and other program priorities such as enforcement and training.

The difference in delineations also causes confusion regarding the Water Quality Certification (WQC) program which DEP administers in tandem with the Wetlands Protection Act program (WPA). The parallel processing is an excellent example of regulatory streamlining but the delineation issue is problematic because the WQC program ties into the Federal delineation method while the WPA ties into the State method. This results in confusion for the public and duplication for DEP wetland staff.

Lastly, the Corps of Engineers staff has participated in several conferences and training courses where conservation commissioners expressed universal support for a consistent method. The staff in the field who administer the program recognize the benefits to be gained by this.

If the Commonwealth adopted the Federal method, it would be possible to assist each other in verifying wetland boundaries, and the Corps could participate in training and provide technical assistance on complex delineations for DEP staff and conservation commissioners.

We have discussed with DEP staff several key points which, if adopted, would result in consistent delineations on the vast majority of cases. These points are as follows:

- 1) Use of presence of a water table within the major portion of the root zone during the growing season as an indicator of hydrology. The concept of groundwater within a major portion of the root zone was one of the indicators in the DEP draft proposal. The use of the term "water table" is more technically supportable.

- 2) Inclusion of hydric soils characteristics as an indicator of hydrology. Additionally, we strongly suggest use of guidelines similar to those used by the Corps of Engineers for defining hydric soils.

I would also like to recommend that the Soil Conservation Service (SCS) provide input into this process in light of your Memorandum of Agreement with them regarding delineations on agricultural lands and the recently enacted Federal Memorandum of Agreement which gives SCS a role in delineation under the Clean Water Act.

In short, the Corps of Engineers endorses the concept of one delineation method because it is in the interest of good government. Please let me know of any assistance the Corps of Engineers can offer to help achieve this important objective.

Your staff may contact Chris Godfrey of the Regulatory Division at 617-647-8673 for additional coordination.

Sincerely,

Dwight S. Durham
Lt. Colonel, Corps of Engineers
District Engineer

C:HF PP BR

for CHF REG DIV

DIR OF WORKERS

EXEC OFFICER

DIST ENG

Copies Furnished:

Ms. Trudy Coxe, Secretary
Executive Office of Environmental Affairs
Office of the Secretary
100 Cambridge Street
Boston, MA 02202

Ms. Sally Zabranski, Executive Officer
Massachusetts Association of Conservation Commissions
10 Juniper Road
Belmont, MA 02178

Ms. Betsy Colburn, Director of Public Policy
Massachusetts Audubon Society
208 South Great Road
Lincoln, MA 01773

Ms. Priscilla Chapman
Sierra Club
3 Joy Street, Room 12
Boston, MA 02108

SPGPs and MA PGP:

- When does Corps make the determination that project should go to screening? It seems like the Corps is not always prepared at JP; there may not be enough information at JP to determine if PGP is appropriate. Corps should be reviewing first, but will generally not ask for new information from the applicant until after JP so that they aren't going back to the applicant several times with requests, modifications, etc.

- We need a mechanism for agencies to request additional information without "kicking out" a project, to put the project on hold, in PGP status, until additional information is received. FWS doesn't like sending letters stating an IP will be required when we are actually just requesting/waiting for additional information and the project may end up as a gp.

- Why are more projects kicked out in MA than in the other states? ME: may be because it is new; for the first few years of the ME gp, more projects were kicked out. NMFS: resources in MA warrant more site visits; e.g., eelgrass, salt marsh, etc. There are fewer resources in other states.

Agencies
define a
mechanism
for adding
info requirements

[4] From: DENISE LEONARD 1/24/94 9:50AM (1411 bytes: 26 ln)
To: MONICA STILLMAN
cc: DENISE LEONARD
Subject: Re: MA PGP Condition

----- Message Contents -----

Hi Denise:

I wanted to let you know I got your suggestion. Has it been determined that we can restrict applicants for any property, even properties not involved in the violation? Is that the case now under Nationwides, etc.?

Such a condition could be added when we reissue the PGP. I will check on the final wording for NH. Has counsel reviewed it?

Thanks--Monica

Monica,

Counsel has in the past stated that we can hold up applications involving people who have unresolved enf. cases even if the proposed work is not connected in any way to the enf. property - and we have done this. Counsel has not reviewed the wording on this proposed amendment. I'm not familiar with the general procedures on who reviews it when. If you will be working on the reissuance of the PGP then I would be happy to do whatever coordination needs to be done with counsel.

Thanks, Denise

TELEPHONE OR VERBAL CONVERSATION RECORD		DATE
For use of this form, see AR 340-13; the proponent agency is The Adjutant General's Office.		1-24-94
SUBJECT OF CONVERSATION		
MA PGP		
INCOMING CALL		
PERSON CALLING	ADDRESS	PHONE NUMBER AND EXTENSION
Julia Ernst	National Wildlife Federation	202-797-6884
PERSON CALLED	OFFICE	PHONE NUMBER AND EXTENSION
M. Stillman	Reg	7862
OUTGOING CALL		
PERSON CALLING	OFFICE	PHONE NUMBER AND EXTENSION
PERSON CALLED	ADDRESS	PHONE NUMBER AND EXTENSION
SUMMARY OF CONVERSATION		
<p>Would like a copy of PGP and info available on <u>processing time</u> - has it <u>decreased</u> since we issued the PGP.</p> <p>Immediate info indicates time to process PGPs only - we haven't compared to pre-PGP #'s at all yet. Could she get a copy of those #'s (processing time for PGP) for now?</p> <p>1400 16th Street N.W. WASHINGTON DC. 20036-2266</p>		

[8] From: DENISE LEONARD 1/7/94 11:56AM (1487 bytes: 27 ln)
To: MONICA STILLMAN
cc: DENISE LEONARD, RUTH LADD
Subject: AMENDMENTS CORRECTION #3 sorry

----- Message Contents -----

MONICA, I MADE SOME MINOR CHANGES WITHIN
THE QUOTATION.

Hi Monica,

We have recently been meeting with Joanne Barry on amendments to the NH SPGP. One of the issues that came up was a possible inclusion of a statement in the "Exclusion" section of the SPGP with respect to unresolved enforcement cases - that is, cases that have either been deferred or that are still active. Joanne will be inserting a statement such as this: "any proposed work on a piece of property on which there is an unresolved Corps enforcement case, OR any proposed work by an applicant against whom there is an unresolved Corps enforcement case at the subject property or any other location, is ineligible for the SPGP until which time the enforcement case has been resolved or until the Corps determines that the application can be processed without first resolving the enforcement case".

I'd like to know if you will be working on the amendments to the MA PGP and if so, if you could insert something to this effect. Pls advise.

Thanks! denise