

Application No.: 199901470

Effective Date: January 11, 2000

Expiration Date: January 11, 2005

Applicant: General Public in Massachusetts

**DEPARTMENT OF THE ARMY PROGRAMMATIC GENERAL PERMIT  
COMMONWEALTH OF MASSACHUSETTS**

The New England District of the U.S. Army Corps of Engineers (Corps) hereby issues a Programmatic General Permit (PGP) 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 and on the attached Definition of Categories, are either non-reporting (provided required local and state permits and required state certifications are received), or are reporting, requiring screening by the Corps and Federal resource agencies for applicability under the general permit. This general permit does not affect the Corps individual permit review process or activities exempt from Corps jurisdiction.

**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); 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); and the transportation of dredged material for the purpose of disposal in the ocean (regulated by the Corps under Section 103 of the Marine Protection, Research and Sanctuaries Act).

**Procedures**

**A. State and Local Approvals**

For projects authorized pursuant to this general permit, when the following local or 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 Massachusetts 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) must be obtained for activities subject to jurisdiction, also 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 water quality certification (WQC), under Section 401 of the Clean Water Act, issued by the Massachusetts DEP before work can proceed (see pages 5 & 6) 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 (CZM) plan and does not require any additional CZM 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), that meets the definition of Category I on the attached Definition of Categories sheet, 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 upstream on a tributary of, or that has the potential to alter flows within a river within the National Wild and Scenic River System (see Condition 10 for listed rivers in Massachusetts).

Work that is not subject to the 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 or activities in Federal wetlands (e.g., isolated wetlands) that are not included in 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 (Reporting - Requiring Screening)**

The Corps will accept DEP's WQC and Chapter 91 applications for its review. However, all projects involving dredging in a navigable water of the U.S. (see application procedures for dredging projects, below) or involving work that is not subject to State jurisdiction must use a Corps application form and be sent directly to the Corps.

### Application Procedures

For projects that do not meet the non-reporting thresholds, written authorization from the Corps and applicable certifications or waivers concerning WQC and CZM are required. Applicants will apply directly to the appropriate DEP regional office (see page 14 for addresses) for WQC and/or Chapter 91 licensing, except for projects involving dredging in navigable waters of the U.S. (see application procedures for dredging projects below). Once DEP determines that an application is complete, they will, in their Administrative completeness letter, notify applicants to send a copy of their complete application to the Corps. DEP will send copies of these letters to the Corps. Applicants will then send a copy of their complete application to the Corps. After review of the application, the Corps will notify applicants if an individual CZM consistency concurrence is required. If the Corps and Federal Resource agencies determine that the activity is eligible for the PGP (see screening procedures below), the Corps will send an authorization letter directly to the applicant and a copy to DEP. If the activity is not eligible under the PGP or if the Corps determines that additional information is required, the Corps will notify the applicant in writing prior to any state authorization and will send a copy of this notification to DEP.

**Additional information required** may include:

- (a) purpose of the project;
- (b) 8½" by 11" plan views of the entire property and project limits with existing and proposed conditions (legible, reproducible plans required);
- (c) wetland delineation for site, information on basis of delineation, and calculations of waterway and wetland impact areas (see Condition 2);

- (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) area, 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 analysis submitted to the DEP for WQC review, and/or additional information compiled on alternatives;
- (j) identify and describe potential impacts to essential fish habitat (see Condition 9);
- (k) photographs of wetland/waterway to be impacted.

### Application Procedures for Dredging Projects

For projects involving dredging in navigable waters of the U.S., applicants must apply directly to the Corps for review. Upon receipt of an application for dredging, the Corps will determine if it (1) requires additional information (see below); (2) is appropriate for screening with the Federal resource agencies (see Category II Federal Screening Procedures below); (3) is ineligible under the terms and/or conditions of this general permit; or (4) will require individual permit review, regardless 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). If open water disposal is proposed, a suitability determination from the Corps, fully coordinated with the Federal resource agencies, will be made before a project can be authorized.

**Additional information required** for dredging projects may include:

- (a) the volume of material and area in square feet to be dredged below mean high water;
- (b) existing and proposed water depths;
- (c) type of dredging equipment to be used;
- (d) nature of material (e.g. silty sand);
- (e) any existing sediment grain size and bulk sediment chemistry data for the proposed or any nearby projects;
- (f) 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);
- (g) shellfish survey;
- (h) identify and describe potential impacts to essential fish habitat (see Condition 9);
- (i) delineation of submerged aquatic vegetation, e.g., eelgrass beds;
- (j) sediment testing, including physical, chemical and biological testing. For projects proposing open water disposal, applicants are encouraged to contact the Corps as early as possible regarding sampling and testing protocols.

All Category II applicants shall submit a copy of their WQC or Chapter 91 application materials to the Historic Preservation Officer at the Massachusetts Historical Commission (MHC), the Wampanoagan Tribal Historic Preservation Officer, and the Narragansett Indian Tribal Historic Preservation Officer (see page 13 for geographic areas of concern) to be reviewed for the presence of historic, archaeological, or tribal resources in the permit area that the proposed work may affect. 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 and tribes).

### Category II Federal Screening Procedures

Projects to be screened will be reviewed with the Federal resource agencies (U.S. Fish and Wildlife Service, U.S. Environmental Protection Agency, and National Marine Fisheries Service) at Joint Processing meetings held every three weeks, or as necessary to provide applicants with a timely response. The Corps and Federal resource agencies, at the branch chief or equivalent level, 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 of 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. Written responses must be signed by the Federal resource agency field supervisor or branch chief as appropriate. 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 Screening Procedures

Category II projects that involve work in or affecting the coastal zone will be screened with CZM at Joint Processing meeting, or by fax if a CZM representative is not at the Joint Processing meeting. CZM will make a determination, at Joint Processing or within 10 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 CZM 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 Office of Coastal Zone Management.

### Minerals Management Service (MMS) Review

Projects with construction of solid fill structures or discharge of fill that may extend beyond 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 13011315, 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 effect" 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.

#### 401 Water Quality Certification

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 as authorized by this general permit for the following circumstances (pursuant to MGL c. 21 Sections 26 - 53 and regulations at 314 CMR 9.00):

- (1) *More than 5000 sq. ft.* Any activity in an area subject to 310 CMR 10.00 which is also subject to 33 U.S.C. 1251, et seq. and will result in the loss of more than 5000 square feet cumulatively of bordering and isolated vegetated wetlands and land under water.
- (2) *Outstanding Resource Waters.* Any activity resulting in any discharge of dredged or fill material to any Outstanding Resource Water.
- (3) *Real Estate Subdivision* - Any discharge of dredged or fill material associated with the creation of a real estate subdivision, unless there is a recorded deed restriction providing notice to subsequent purchasers limiting the amount of fill for the single and complete project to less than 5000 square feet cumulatively of bordering and isolated vegetated wetlands and land under water and the discharge is not to an Outstanding Resource Water. Real estate subdivisions include divisions where approval is required and where approval is not required under the Subdivision Control Law, M.G.L. c. 41, §81K through 81GG. Discharges of dredged or fill material to create the real estate subdivision include but are not limited to the construction of roads, drainage, sidewalks, sewer systems, buildings, septic systems, wells, and accessory structures.
- (4) *Activities Exempt under M.G.L. c. 131, §40.* Any activity not subject to M.G.L. c. 131, §40 which is subject to 33 U.S.C. 1251, et seq. and will result in any discharge of dredged or fill material to bordering vegetated wetlands or land under water.
- (5) *Routine Maintenance.* Routine maintenance of existing channels, such as mosquito control projects or road drainage maintenance, that will result in the annual loss of more than 5000 square feet cumulatively of bordering and isolated vegetated wetland and land under water will be evaluated under the criteria of 314 CMR 9.06. A single application may be submitted and a single certification may be issued for repeated routine maintenance activities on an annual or multi-year basis not to exceed five years.
- (6) *More than 5000 sq. ft. of Isolated Vegetated Wetlands.* Any activity in an area not subject to jurisdiction of M.G.L. c. 131, §40 which is subject to 33 U.S.C. 1251, et seq. (i.e., isolated vegetated wetlands) which will result in the loss of more than 5000 square feet cumulatively of bordering and isolated vegetated wetlands and land under water.
- (7) *Rare and Endangered Species Habitat in Isolated Vegetated Wetlands.* Any activity resulting in the discharge of dredged or fill material to an isolated vegetated wetland that has been identified as habitat for rare and endangered species.
- (8) *Salt Marsh.* Any activity resulting in the discharge of dredged or fill material in any salt marsh.

(9) *Individual 404 Permit.* Any activity subject to an individual Section 404 permit by the Corps of Engineers.

(10) *Agricultural Limited Project.* Agricultural work, not exempt under M.G.L. c. 131, §40, referenced in and performed in accordance with 310 CMR 10.53(5). Provided the activity does not result in any discharge of dredged or fill material to an Outstanding Resource Water, such work will be presumed to meet the criteria of 314 CMR 9.06 where a comparable alternatives analysis is performed by the Natural Resources Conservation Service and included in the Notice of Intent.

(11) *Discretionary Authority.* Any activity where the Department invokes discretionary authority to require an application based on cumulative effects of activities, cumulative effects from the discharge of dredged or fill material to bordering or isolated vegetated wetlands or land under water, or other impacts that may jeopardize water quality. The Department will issue a written notice of and statement of reasons for its determination to invoke this discretionary authority not later than ten business days after its receipt of an Order of Conditions.

(12) *Dredging Greater than 100 c.y.* Any dredging or dredged material disposal of more than 100 cubic yards in navigable waters.

#### **D. Corps Authorization: Individual Permit**

Work that is defined in the Individual Permit category 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 (see 33 CFR Part 325.1). The screening procedures outlined above will only serve to delay project review in such cases. The applicant shall submit the appropriate application materials (including the Corps application form) at the earliest possible date; general information and application forms can be obtained at (978) 318-8338, (800) 362-4367, or (800) 343-4789 outside of Massachusetts. Individual WQC and CZM consistency concurrence are required from the Commonwealth of Massachusetts before Corps permit issuance.

**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 (reporting – requiring 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 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 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 permit 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 and/or all planned phases of a multi-phased project. This does not apply to linear projects, such as power lines or pipelines, with multiple, separate, and distinct waterway or wetland crossings, where each crossing may be reviewed for Category I eligibility. If any crossing requires a Category II activity, then the entire linear project shall be reviewed as one project under Category II. 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 Officer, the National Register of Historic Places, the Wampanoagan Tribal Historic Preservation Officer, and the Narragansett Indian Tribal Historic Preservation Officer. See page 13 for historic properties contacts and geographic areas of concern for each. 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 District 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 authorized under this general permit may affect a threatened or endangered species or a species proposed for such designation, as identified under the Federal Endangered Species Act (ESA), which is likely to destroy or adversely modify the critical habitat of such species, 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

ESA 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 listed on page 13).

**9. Essential Fish Habitat.** As part of the PGP screening process, the Corps will coordinate with the National Marine Fisheries Service (NMFS) in accordance with the 1996 amendments to the Magnuson-Stevens Fishery and Conservation Management Act to protect and conserve the habitat of marine, estuarine and anadromous finfish, mollusks, and crustaceans. This habitat is termed "essential fish habitat (EFH)", and is broadly defined to include "those waters and substrate necessary to fish for spawning, breeding, feeding, or growth to maturity." Applicants may be required to describe and identify potential impacts to EFH. Any work in streams in the Connecticut and Merrimack River watersheds that are stocked with Atlantic salmon (see attached lists) shall not be authorized under Category I of the MAPGP and must be screened for potential impacts to EFH. Conservation recommendations made by NMFS will normally be included as a permit requirement by the Corps. Information on the location of EFH can be obtained from the NMFS (50 CFR Part 600)(address listed on page 13).

**10. Wild and Scenic Rivers.** Any activity that occurs in a component of, or within 0.25 mile up or downstream of the main stem or tributaries of a segment of, or that has the potential to alter flows within a river within the National Wild and Scenic River System must be reviewed by the Corps under the procedures of Category II of this general permit regardless of size of impact. This condition applies to both designated wild and scenic rivers and rivers officially designated by Congress as study rivers for possible inclusion while such rivers are in official study status. The Corps will consult with the National Park Service (NPS) with regard to potential impacts of the proposed work on the resource values of the wild and scenic river. The culmination of this coordination will be a determination by the NPS and the Corps that the work: (1) may proceed as proposed; (2) may proceed with recommended conditions; or (3) could pose a direct and adverse effect on the resource values of the river and an individual permit is required. If preapplication consultation between the applicant and the NPS has occurred whereby NPS has made a determination that the proposed project is appropriate for authorization under this PGP (with respect to Wild and Scenic River issues), this determination should be furnished to the Corps with submission of the application.

National Wild and Scenic Rivers System segments for Massachusetts as of December 1999, include: **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 1,000 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 **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 2,000 feet downstream of Becket Village in Becket, MA, downstream to the Chester/Huntington, MA, town line.



11. **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.

12. **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.

13. **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:**

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

15. **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.

16. **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 approximate original elevations, but not higher. No temporary fill shall be placed in waters and/or wetlands unless specifically authorized by the Corps.

17. **Coastal Bank Stabilization.** Projects involving reconstruction or maintenance of an existing coastal bank stabilization structure within Corps jurisdiction should be designed to minimize environmental effects to the maximum extent practicable (includes minimization of scour, etc.).

18. **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.

**19. 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, in-stream construction work shall be conducted during the low flow period, July 1 to 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.

**20. 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 the Massachusetts Stormwater Management Policy (as described in "Stormwater Management, Volume One: Stormwater Policy Handbook," March 1997, or subsequent versions), 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 other 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 six months of the effective date of such revision or modification, or within a longer period of time deemed reasonable by the District 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 WQC.

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

**22. Storage of Seasonal Structures.** Coastal structures, such as pier sections and floats, 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 tidal wetlands.

**23. 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 practicable, and to minimize any adverse impacts on existing fish, wildlife, and natural environmental values.

#### **PROCEDURAL CONDITIONS:**

**24. Inspections.** The permittee shall allow the District 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 District Engineer may also require post-construction engineering drawings

for completed work or post-dredging survey drawings for any dredging work. **To facilitate these inspections, the attached work notification form shall be filled out and returned to the Corps for all Category II projects.**

25. **Maintenance.** The permittee shall maintain the work or structures authorized herein in good condition, including maintenance to ensure public safety. This does not include maintenance of dredging projects. Maintenance dredging is subject to the review thresholds on the attached Definition of Categories sheets, and/or any conditions included in a written Corps authorization.

26. **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.

27. **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. Any such action shall not be the basis for any claim for damages against the United States.

28. **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.

29. **Special Conditions.** The Corps may independently or at the request of the Federal resource agencies 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.

30. **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, then the permit shall not be valid and the Government may institute appropriate legal proceedings.

31. **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 District Engineer.


32. **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 or Environmental Protection Agency enforcement action, until such time as the enforcement action is resolved or the Corps and/or EPA determines that the activity may proceed independently without compromising the enforcement action.

**DURATION OF AUTHORIZATION/GRANDFATHERING:**

33. **Duration of Authorization.** Activities authorized under this general permit that have 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.

34. **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 or in accordance with a project specific date provided in writing by the Corps to the permittee, 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.

  
BRIAN E. OSTERNDORF, COLONEL  
CORPS OF ENGINEERS

Jan 4, 2000  
DATE

**Contacts for Programmatic General Permit:****December 1999**

U.S. Army Corps of Engineers  
Regulatory Branch  
696 Virginia Road  
Concord, Massachusetts 01742  
(978) 318-8335  
(800) 343-4789 (ME, VT, NH, RI, CT)  
(800) 362-4367 (Massachusetts)  
<http://www.nae.usace.army.mil/enviro/m/reg1.htm>

Coastal Zone Management  
100 Cambridge Street 20th Floor  
Boston, Massachusetts 02202  
(617) 626-1200

National Park Service  
North Atlantic Region  
15 State Street  
Boston, MA 02109  
(617) 223-5203

**Historic Properties:**

Massachusetts Historical Commission  
The Massachusetts Archives Bldg.  
220 Morrissey Boulevard  
Boston, Massachusetts 02125  
(617) 727-8470  
Area of concern: All of MA

Wampanoagan Tribal Historic  
Preservation Officer  
20 Black Brook Road  
Aquinnah, MA 02535  
(508) 645-9265  
(508) 645-3790 (fax)  
Area of concern: All of MA

Narragansett Indian Tribal  
Historic Preservation Officer  
P.O. Box 700  
Wyoming, RI 02898  
(401) 539-1190  
(401) 539-4217 (fax)

Area of concern: (1) West of Worcester to and including Greenfield; (2) Middleborough and surrounding towns; (3) Kingston and surrounding towns; (4) and Deer Island

**Federal Endangered Species and Essential Fish Habitat:**

National Marine Fisheries Service  
One Blackburn Drive  
Gloucester, Massachusetts 01930  
(978) 281-9300

**Federal Endangered Species:**

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

**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-Central Region  
Wetlands Protection Program  
627 Main Street  
Worcester, Massachusetts 01608  
(508) 792-7650

DEP-Southeast Region  
Wetlands Protection Program  
20 Riverside Drive, Route 105  
Lakeville, Massachusetts 02347  
(508) 946-2800

DEP-Northeast Region  
Wetlands Protection Program  
205 Lowell Street  
Wilmington, Massachusetts 01887  
(978) 661-7600

## DEFINITION OF CATEGORIES

	<b>CATEGORY I</b>	<b>CATEGORY II</b>	<b>INDIVIDUAL PERMIT</b>
<b>A. INLAND WATERS AND WETLANDS<sup>1</sup></b>			
(a) NEW FILL/ EXCAVATION DISCHARGES	<p>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, except for incidental fallback.</p> <p>* In-stream work limited to July 1-October 1.</p> <p>* This category excludes dams, dikes, or activities involving water diversions, such as bypass pumping, or water withdrawals.</p> <p>* This category excludes work on Corps properties and Corps-controlled easements<sup>2</sup>.</p> <p>* This category excludes work in special inland waters and wetlands<sup>3</sup>.</p> <p>* This category excludes work in streams in the Connecticut and Merrimack River watersheds that are stocked with Atlantic salmon (<i>Salmo salar</i>) (see attached lists).</p>	<p>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, except for incidental fallback.</p> <p>* Time-of-year restriction to be determined case-by-case.</p> <p>Proactive restoration projects with any amount of impact can be reviewed under Cat. II. The Corps, in consultation with State and Federal agencies, must determine that net adverse effects are not more than minimal.</p>	<p>Greater than 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, except for incidental fallback.</p> <p>EIS required by the Corps.</p>
(b) BANK STABILIZATION PROJECTS	<p>Inland bank stabilization less than 500 ft. long and less than 1 c.y. fill per linear foot below ordinary high water.</p> <p>* No wetland fill.</p> <p>* In-stream work limited to July 1-October 1.</p>	<p>Inland bank stabilization greater than 500 ft. long and/or greater 1 c.y. fill per linear foot, or any amount with fill in wetlands.</p>	
(c) REPAIR AND MAINTENANCE OF AUTHORIZED FILLS	<p>Repair/maintenance of existing, currently-serviceable, authorized fills with no expansion or change in use.</p>	<p>Replacement of non-serviceable fill, or repair/maintenance of serviceable fill, with expansion up to 1 acre, or with a change in use.</p>	<p>Replacement of non-serviceable fill, or repair/maintenance of serviceable fill, with expansion greater than 1 acre.</p>

	<b>CATEGORY I</b>	<b>CATEGORY II</b>	<b>INDIVIDUAL PERMIT</b>
<b>B. NAVIGABLE WATERS<sup>4</sup></b>			
(a) FILL	<p>Fills authorized by Ch. 91 Amnesty program (e.g. seawalls or bulkheads).</p> <p>No provisions for new or previously unauthorized fills in Category I, other than those authorized under the MA Chapter 91 Amnesty program.</p>	<p>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.</p> <p>Temporary fill and excavation, up to 1 acre in special aquatic sites<sup>5</sup>.</p> <p>No permanent fill and/or excavation in special aquatic sites<sup>5</sup> except when associated with a proactive restoration project. Proactive restoration projects with any amount of impact can be reviewed under Cat. II. The Corps, in consultation with State and Federal agencies, must determine that net adverse effects are not more than minimal.</p>	<p>Greater than 1 acre waterway fill and/or secondary waterways or wetland impacts (e.g., areas drained or flooded). Fill includes temporary and permanent waterway fill.</p> <p>Temporary fill and excavation greater than 1 acre in special aquatic sites<sup>5</sup>.</p> <p>Permanent fill or excavation, any amount, in special aquatic sites<sup>5</sup>, other than as specified in Cat. II.</p> <p>EIS required by the Corps.</p>
(b) REPAIR AND MAINTENANCE WORK	<p>Repair/maintenance of existing, currently serviceable, authorized structures and fills and Amnesty-approved fills, with no expansion or change in use.</p> <p>* Must be rebuilt in same footprint.</p>	<p>Replacement of non-serviceable structures and fills or repair/maintenance of serviceable structures or fills, with fill replacement or expansion up to 1 acre.</p>	<p>Replacement of non-serviceable structures and fills or repair/maintenance of serviceable structure or fill, with fill replacement or expansion greater than 1 acre.</p>
(c) DREDGING	<p>Maintenance dredging less than 1,000 c.y. with upland disposal, provided proper siltation controls are used.</p> <p>* Dredging and disposal operation limited to November 1-January 15.</p> <p>* No impacts to special aquatic sites<sup>5</sup>.</p> <p>* Includes return water from upland contained disposal area.</p>	<p>Maintenance dredging greater than 1,000 c.y., new dredging up to 25,000 c.y., or projects that do not meet Cat. I.</p> <p>* Disposal includes upland, beach nourishment, and open water, only if Corps, in consultation with Federal and State agencies, finds the material suitable.</p> <p>* No impacts to special aquatic sites<sup>5</sup>.</p> <p>* Includes return water from upland contained disposal areas.</p>	<p>Maintenance dredging and/or disposal (any amount) in or affecting a special aquatic site<sup>5</sup>, new dredging greater than 25,000 c.y. or any amount in or affecting a special aquatic site<sup>5</sup>.</p>



	<b>CATEGORY I</b>	<b>CATEGORY II</b>	<b>INDIVIDUAL PERMIT</b>
(e) MOORINGS	<p>Private, non-commercial, non-rental single-boat moorings and authorized by the local harbor master.</p> <ul style="list-style-type: none"> <li>* Not associated with any boating facility<sup>6</sup>.</li> <li>* Not located in a Federal Navigation Project other than a Federal Anchorage.</li> <li>* Not located in vegetated shallows<sup>7</sup>.</li> </ul>	<p>Moorings that do not meet the terms in Cat. I.</p>	<p>Moorings within the horizontal limits or with moored vessels that extend within the limits of a Federal Navigation Project, except those in Federal Anchorages authorized under Cat. I.</p>
(f) PILE-SUPPORTED STRUCTURES AND FLOATS	<p>Piers and structures licensed by Ch. 91 through the Amnesty program.</p> <p>Private, bottom-anchored floats up to 400 s.f. in size.</p> <p>Private, pile-supported piers for navigational access to the waterway, up to 400 s.f. in size with attached floats up to 200 s.f. (total).</p> <p>Provided (for all of the above):</p> <ul style="list-style-type: none"> <li>* Floats are supported off the substrate at low tide.</li> <li>* Structures and moored vessels are not positioned over vegetated shallows<sup>7</sup>.</li> <li>* Structures, 4' wide, and moored vessels that are positioned over special aquatic sites<sup>5</sup> (other than vegetated shallows) have at least a 1:1 height:width ratio<sup>8</sup>.</li> <li>* Ch. 91 license issued.</li> <li>* Not associated with a boating facility<sup>6</sup>.</li> <li>* Not located within 3 times the authorized depth of a Corps Federal Navigation Project.</li> </ul>	<p>Private piers and floats that do not meet the terms in Cat. I.</p> <p>Expansions to existing boating facilities<sup>6</sup>.</p>	<p>Structures, piers, or floats that extend or with docked or moored vessels that extends within the horizontal limits of a Corps Federal Navigation Project.</p> <p>Structure, including piers and floats, associated with a new or previously unauthorized boating facility<sup>6</sup>.</p>
(g) MISCELLANEOUS	<p>Temporary buoys, markers, floats, and similar structures for recreational use during specific events, provided they are removed within 30 days after use is discontinued.</p>	<p>Structures or work in or affecting tidal or navigable waters that are not defined under any of the previous headings listed above. Includes, but is not limited to, utility lines, aerial transmission lines, pipelines, outfalls, boat ramps, and bridges.</p>	<p>EIS required by the Corps.</p>

	<b>CATEGORY I</b>	<b>CATEGORY II</b>	<b>INDIVIDUAL PERMIT</b>
(g) MISCELLANEOUS (cont.)	<p>Coast Guard-approved aids to navigation.</p> <p>Oil spill clean-up temporary structures and fill.</p> <p>Fish and wildlife harvesting structures and fill (as defined by 33 CFR 330, APP. A-4).</p> <p>Scientific measurement devices and survey activities such as exploratory drilling, surveying, and sampling activities. Does not include oil and gas exploration and fill for roads or construction pads.</p>	Shellfish aquaculture facilities; refer to Corps Aquaculture Letter of Permission dated Sept. 1, 1991 for guidelines.	

<sup>1</sup> **Inland Waters and Wetlands:** Rivers, streams, lakes, ponds and wetlands, excluding Section 10 Navigable Waters of the U.S.

<sup>2</sup> Contact the Corps, ATTN: Real Estate Division to initiate reviews with respect to both Corps holdings and permit requirements.

<sup>3</sup> **Special Inland Waters and Wetlands:** Vernal pools – confined basin depressions with water for two or more continuous months in the spring and/or summer, for which evidence of one or more of the following obligate vernal pool species: wood frogs (*Rana sylvatica*), mole salamanders (*Ambystoma* spp.), and fairy shrimp (*Eubranchipus* spp.) has been documented **OR** for which evidence of two or more of the following facultative organisms: caddisfly (*Trichoptera*) larvae casings, fingernail clams (*Sphaeriidae*), or amphibious snails (*Basammatophora*) and evidence that the pool does not contain an established reproducing fish population has been documented (see MA NHESP "Guidelines for Certification of Vernal Pools " for further clarification).

<sup>4</sup> **Navigable Waters of the United States:** Waters that are subject to the ebb and flow of the tide and Federally designated navigable rivers (the Merrimack River, Connecticut River, and Charles River to the Watertown Dam in Massachusetts) (Section 10 Rivers and Harbors Act of 1899).

<sup>5</sup> **Special Aquatic Sites:** Include wetlands and saltmarsh, mudflats, riffles and pools, and vegetated shallows.

<sup>6</sup> **Boating Facilities:** Facilities that provide, rent, or sell mooring space, such as marinas, yacht clubs, boat clubs, boat yards, town facilities, dockominiums, etc.

<sup>7</sup> **Vegetated Shallows:** Subtidal areas that support rooted aquatic vegetation such as eelgrass.

<sup>8</sup> The proposed structure shall be at least as high as it is wide over the substrate of the special aquatic site.

## **ESSENTIAL FISH HABITAT**

Any fill in the following Waters of the U.S. in the specified towns must be reviewed under Category II of the MAPGP for potential impacts to EFH. Please note that the mainstems of the Connecticut and Merrimack Rivers are Navigable waters of the U.S. and any fill in them must be reviewed under Category II. Any questions on locations should be directed to the Corps.

### **Connecticut River Watershed**

#### Agawam:

Westfield River

#### Ashfield:

Bear River

South River to Baptist Corner Road

#### Athol:

Millers River

#### Becket:

Depot Brook

Shaker Mill Brook

Walker Brook to Spark Brook

West Branch Westfield River

Yokum Brook to Rudd Pond Brook

#### Bernardston:

Fall River

#### Blandford:

Wigwam Brook

#### Buckland:

Deerfield River

#### Charlemont:

Chickley River

Cold River

Deerfield to Pelham Brook

North River

Pelham Brook

#### Chester:

Middle Branch Westfield River

Walker Brook

West Branch Westfield River

#### Chesterfield:

Child's Brook West Branch

Dead Branch

Tower Brook

Westfield River

#### Colrain:

North River

East Branch North River

West Branch North River

Green River

#### Conway:

Bear River

Deerfield River

Poland Brook

South River

#### Cummington:

Bartlett Brook

Child's Brook West Branch

Meadow Brook

North Branch Swift River to Stage Rd.

Swift River

Westfield Brook

Westfield River

#### Deerfield:

Deerfield River

#### Easthampton:

Manhan River to North Branch Manhan River

North Branch Manhan River

#### Erving:

Millers River

#### Florida:

Cold River

#### Gill:

Fall River

#### Goshen:

Swift River

#### Greenfield:

Allen Brook

Deerfield River

Fall River

Green River

Hatfield:

Mill River to West Brook  
West Brook

Hawley:

Chickley River to King Brook  
Mill Brook to Gorge Hill Rd.

Huntington:

Dead Branch to Westfield River  
Little River  
Middle Branch Westfield River  
Pond Brook to Searle Rd.  
Roaring Brook to Mica Mill Rd.  
West Branch Westfield River  
Westfield River

Leverett:

Sawmill River

Leyden:

Green River

Middlefield:

Factory Brook  
Middle Branch Westfield River to Tuttle  
Brook  
West Branch Westfield River

Montague:

Millers River  
Sawmill River

Montgomery:

Westfield River  
Roaring Brook

Northampton:

North Branch Manhan River

Orange:

Millers River

Plainfield:

Bartlett Brook to Prospect St.  
Meadow Brook to Gloyd St.

Rome:

Pelham Brook to Rice Brook

Royalston:

Millers River to Birch Hill Dam

Russell:

Bradley Brook  
Potash Brook  
Stage Brook  
Westfield River

Savoy:

Cold River to Black Brook  
Westfield River to Griffin Hill Rd.

Shelburne:

Allen Brook  
Deerfield River  
North River

Shutesbury:

Sawmill River

Southampton:

North Branch Manhan River

Southwick:

Munn Brook

Washington:

Depot Brook to Frost Rd.

Wendell:

Millers River

Westfield:

Little River to Munn Brook  
Moose Meadow Brook to Mass Turnpike  
Munn Brook  
Westfield River

Westhampton:

Dead Branch  
North Branch Manhan River to Northwest  
Rd.

West Springfield:

Westfield River

Whately:

West Brook to Haydenville Rd

Windsor:

Westfield Brook to East Windsor Rd.  
Westfield River

Worthington:

Bronson Brook  
Child's Brook West Branch  
Little River to Goss Hill Rd.  
Middle Branch Westfield River to Tuttle  
Brook

**Merrimack River Watershed**

Pepperell:

Nissitissit River to Nashua River  
Nashua River from Nissitissit River to  
New Hampshire border

**PGP WORK START NOTIFICATION FORM**  
**(Minimum Advance Notice: Two Weeks)**

**MAIL TO:** U.S. Army Corps of Engineers, New England District  
Regulatory Branch  
Policy Analysis/Technical Support Section  
696 Virginia Road  
Concord, Massachusetts 01742-2751

A Corps of Engineers Permit (No. \_\_\_\_\_) was issued to \_\_\_\_\_. The permit authorized \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

The people (e.g., contractor) listed below will do the work, and they understand the permit's conditions and limitations.

PLEASE PRINT OR TYPE

Name of Person/Firm: \_\_\_\_\_  
\_\_\_\_\_

Business Address: \_\_\_\_\_  
\_\_\_\_\_

Telephone: (\_\_\_\_) \_\_\_\_\_ (\_\_\_\_) \_\_\_\_\_

Proposed Work Dates: Start: \_\_\_\_\_

Finish: \_\_\_\_\_

PERMITTEE'S SIGNATURE: \_\_\_\_\_ DATE: \_\_\_\_\_

PRINTED NAME: \_\_\_\_\_ TITLE: \_\_\_\_\_

**FOR USE BY THE CORPS OF ENGINEERS**

PM: \_\_\_\_\_ Submittals Required: \_\_\_\_\_

**Inspection Recommendation:** \_\_\_\_\_

# Federal Navigation Projects in Massachusetts

