



**US Army Corps  
of Engineers**  
New England District

696 Virginia Road  
Concord, MA 01742-2751

# PUBLIC NOTICE

Date: January 11, 2000

File Number: 199901470

In Reply Refer To: Ms. Christine Godfrey 978-318-8338

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## REISSUANCE OF PROGRAMMATIC GENERAL PERMIT AND REVOCATION OF NATIONWIDE PERMITS IN MASSACHUSETTS

**The New England District, U.S. Army Corps of Engineers, 696 Virginia Road, Concord, MA 01742-2751** hereby issues the statewide Programmatic General Permit (PGP) pursuant to 33 CFR Part 325.5(c)(3), for minimal-impact activities within the State of Massachusetts. **The effective date of the new PGP is January 11, 2000.** The new PGP will continue to provide a simplified review process for activities in Corps jurisdiction under Section 404 of the Clean Water Act, Section 10 of the Rivers and Harbors Act of 1899, and Section 103 of the Marine Protection, Research and Sanctuaries Act.

At the same time, the Division Engineer has made a decision to exercise his discretionary authority pursuant to 33 CFR 330.5 to revoke the Nationwide permits in Massachusetts. The PGP will continue to replace the Nationwide permits.

Programmatic General Permits are encouraged under the President's plan as a way to streamline state and Federal regulatory programs. The New England District has already had excellent success with streamlining these programs through the use of PGPs throughout New England. In conjunction with the issuance of the new PGP, all Nationwide Permits in Massachusetts have been revoked.

Projects with minimal individual and cumulative effects on the aquatic environment will be approved administratively under this PGP. Projects with the potential for more than minimal effects will be subjected to individual permit review.

All PGP authorizations will be subject to the applicability requirements, procedures, and conditions contained in the PGP document (attached). Project eligibility under this PGP will fall into two categories: non-reporting projects (Category I) and reporting projects, requiring screening (Category II).

Category II activities will be reviewed by the Corps, the State, and the Federal resource agencies (U.S. Fish and Wildlife Service, U.S. Environmental Protection Agency, and National Marine Fisheries Service) as outlined within the attached document. Through interagency screening, the Corps will determine if the individual and cumulative adverse environmental impacts are minimal and whether the project may proceed under the PGP.

Projects that do not meet the terms and conditions of the PGP will require an individual permit. The individual permit review procedures are not altered by the PGP. Federal exemptions, which are not necessarily the same as the State's exemptions, would also not be altered by the PGP. In addition, PGP authorizations will **not** be valid until all other required Federal, State, and local permits and/or certifications are obtained.

The new PGP supercedes the previous PGP, #199301040, but does not affect activities authorized under the previous PGP that have commenced work prior to the new issuance. 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 category under which it was authorized, shall remain authorized provided the activity is completed within twelve months of the date of the expiration of the current PGP, that is by March 1, 2001.

If you require additional information about the proposed PGP, please contact Ms. Godfrey at the address above or by telephone at (978) 318-8338 or toll free at (800) 343-4789 or (800) 362-4367 if calling from within Massachusetts.

Note the Corps has received Water Quality Certification from MA Department of Environmental Protection on December 13, 1999 and Coastal Zone Consistency from Massachusetts Coastal Zone Management Program on October 14, 1999 for the new PGP.

A handwritten signature in black ink, appearing to read "W. F. Lawless". The signature is written in a cursive style with a large initial "W" and "L".

William F. Lawless, P.E.  
Chief, Regulatory Branch  
Construction/Operations Division

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: \_\_\_\_\_

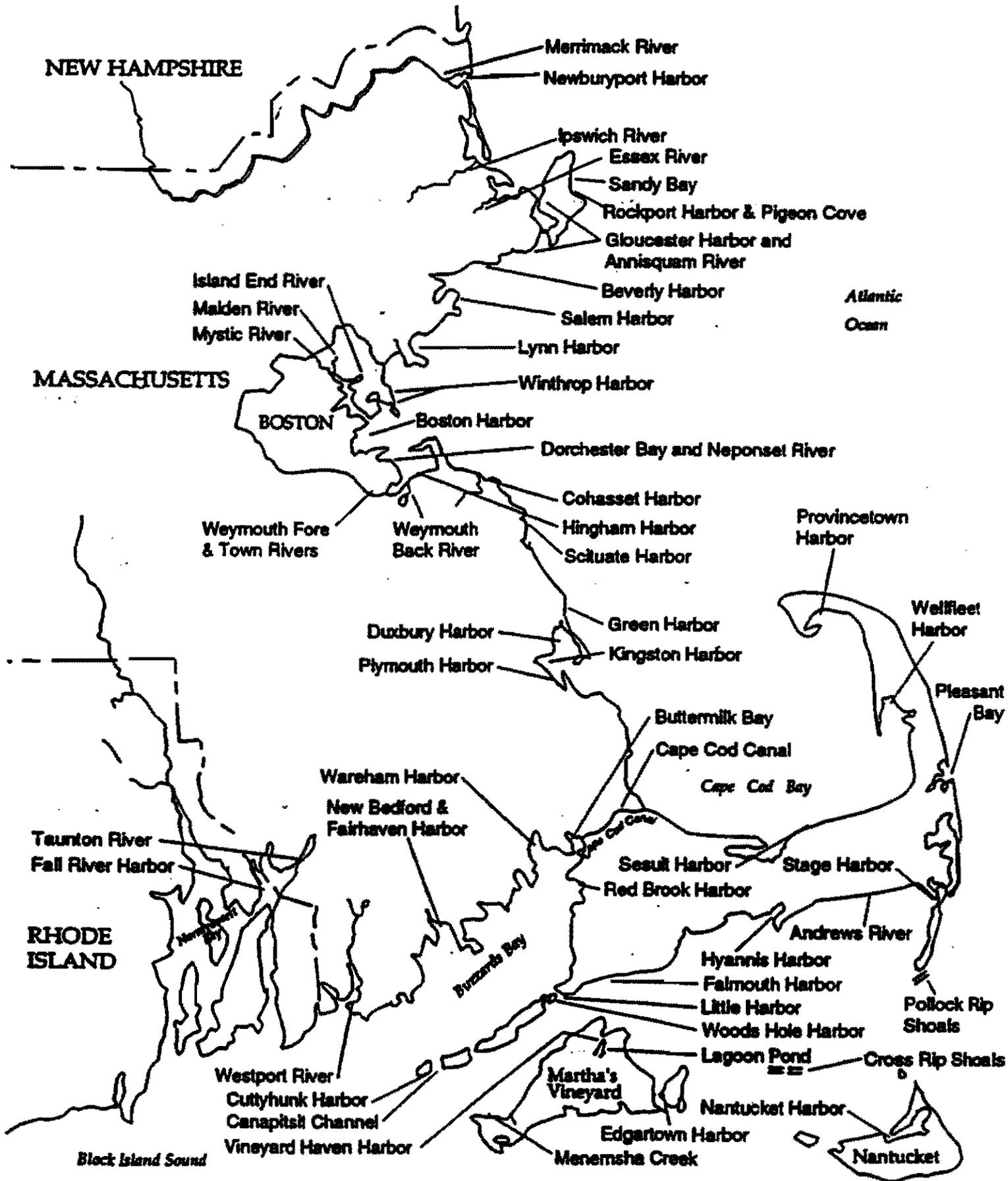
PRINTED NAME: \_\_\_\_\_ TITLE: \_\_\_\_\_

**FOR USE BY THE CORPS OF ENGINEERS**

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

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

# Federal Navigation Projects in Massachusetts



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

This document discusses the factors considered by the Corps of Engineers (Corps) during the issuance process for this Programmatic General Permit (PGP) for the Commonwealth of Massachusetts. This document contains: (1) the public interest review required by Corps regulations at 33 CFR 320.4(a)(1) and (2); (2) a discussion of the environmental considerations necessary to comply with the National Environmental Policy Act; and (3) the impact analysis specified in Subparts C through F of the 404(b)(1) Guidelines (40 CFR 230). This evaluation of this PGP includes a discussion of compliance with applicable laws, consideration of public comments, an alternatives analysis, and general assessment of individual and cumulative impacts, including the general potential effects on each of the public interest factors specified at 33 CFR 320.4(a).

1. **MINIMAL IMPACT ACTIVITIES:** Activities related to: (i) work and structures that are located in, or that affect, navigable waters of the United States, (ii) the discharge or dredge or fill material into waters of the United States, provided that the activity meets the thresholds described in Categories I and II of the attached table, and (iii) the transportation of dredged material for the purpose of disposal in the ocean, provided the activity meets the thresholds described in Category I or II of the attached "Definition of Categories" table.
2. **STATUTORY AUTHORITY:**
  - (a) Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403)
  - (b) Section 404 of the Clean Water Act (33 U.S.C. 1344)
  - (c) Section 103 of the Marine Protection, Research and Sanctuaries Act
3. **COMPLIANCE WITH RELATED LAWS (33 CFR 320.3):**
  - (a) **General:**

PGPs are a type of general permit designed to authorize certain activities that have minimal adverse impacts on the aquatic environment, individually or cumulatively, and generally comply with the related laws cited in 33 CFR 320.3. Activities that result in more than minimal adverse effects on the aquatic environment cannot be authorized by PGPs. Individual review of each activity authorized by a PGP will not normally be performed (Category I activities), except when reporting/screening is required by the Corps (Category II activities) or when an applicant requests verification that an activity complies

with Category I of this general permit. Potential adverse impacts and compliance with the laws cited in 33 CFR 320.3 are controlled by the terms and conditions of this general permit and the review process that is undertaken prior to issuance of the PGP.

The evaluation of this general permit, and related documentation, considers compliance with each of the following laws, where applicable: Sections 401, 402, and 404 of the Clean Water Act; Section 307(c) of the Coastal Zone Management Act of 1972, as amended; Section 302 of the Marine Protection, Research and Sanctuaries Act of 1972, as amended; the National Environmental Policy Act of 1969; the Fish and Wildlife Act of 1956; the Migratory Marine Game-Fish Act; the Fish and Wildlife Coordination Act; the Federal Power Act of 1920, as amended; the National Historic Preservation Act of 1966; the Interstate Land Sales Full Disclosure Act; the Endangered Species Act; the Deepwater Port Act of 1974; the Marine Mammal Protection Act of 1972; Section 7(a) of the Wild and Scenic Rivers Act; the Ocean Thermal Energy Act of 1980; the National Fishing Enhancement Act of 1984; and the Magnuson-Stevens Fishery and Conservation and Management Act. In addition, compliance of this general permit with other Federal requirements, such as Executive Orders and Federal regulations addressing issues such as floodplains, essential fish habitat, impaired waters, and critical resource waters is considered.

(b) Terms and Conditions:

1. 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. Projects authorized by this general permit shall have minimal individual and cumulative adverse environmental impacts as determined by the Corps.
4. Notwithstanding compliance with the terms and conditions of this general 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 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 this general permit, 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 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. 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.

6. 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, the National Register of Historic Places, the Wampanoagan Tribal Historic Preservation Officer, and the Narragansett Indian Tribal Historic Preservation Officer. 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. Activities authorized by this general permit shall not impinge upon the value of any National Wildlife Refuge, National Forest, National Marine Sanctuary or any area administered by the National Park Service.

8. 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); or is likely to destroy or adversely modify the critical habitat of such species; or would result in a "take" of any threatened or endangered species of fish or wildlife; or 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.

9. 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. In Massachusetts, NMFS has determined that Atlantic salmon (*Salmo salar*) habitat is protected by this act. Any work in the Merrimack River or in streams in the Connecticut River watershed that are stocked with Atlantic salmon (see attached maps) may 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 NMFS.

10. 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 approved 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.

11. 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 shall be subject to removal at the owner's expense prior to any future Corps dredging or any periodic hydrographic surveys.

12. In issuing this general 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. 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.

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

15. 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 in waters and wetlands authorized by this general permit 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.

17. 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. 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. (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 15 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. 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 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 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 401 Water Quality Certification.

21. 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. Coastal structures, such as pier sections or 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. 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.

24. 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 any work and post-dredging survey drawings for any dredging work.

25. 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 tables, and/or any conditions included in a written Corps authorization.

26. This general 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. This general permit may be 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. 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. 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.

30. 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.

31. 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. 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

33. 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. (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.

(c) Review Process:

The analyses in this document and the coordination that was undertaken prior to the issuance of this general permit fulfill the requirements of the National Environmental Policy Act (NEPA), the Fish and Wildlife Coordination Act, and other acts promulgated to protect the quality of the environment.

All PGP authorizations for activities that may result in discharges into waters of the United States require Section 401 water quality certification. All PGP authorizations for activities within or affecting land or water uses within the Commonwealth of Massachusetts must also be certified as consistent with the Commonwealth's Coastal Zone Management Program. MADEP and MACZM have issued water quality certification and coastal zone consistency, respectively, for all Category I projects and will individually review all Category II projects.

(d) Public Comment and Response:

The New England District issued a public notice describing the MA PGP on June 8, 1999 that expired on July 8, 1999. The District received a total of 7 comment letters to the public notice. All of the letters received were in favor of the concept of the MAPGP but had adverse comments on varying issues. All comments received are noted below and have been evaluated and are included in the administrative record of this action.

Three of the comment letters received in response to the public notice were submitted by the Environmental Protection Agency (EPA). The first letter suggested that all projects impacting vernal pools or state-listed species habitat should, at minimum, be reviewed under Category II. Two similar comment letters received were submitted by the Massachusetts Audubon Society and the Division of Fisheries and Wildlife Natural Heritage and Endangered Species Program (NHESP). After several discussions with EPA and NHESP, we have determined that the following language will be included in the PGP in order to minimize impacts to this valuable habitat type. "[Category I] excludes work in special inland waters and wetlands. [This includes] **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)."

The other two comment letters from EPA related to the proposed changes for dredging projects. They questioned the increase in volume allowed under Category II from 10,000 c.y. to 25,000 c.y. and the allowance of open water disposal under the PGP. After meetings between the Corps and EPA, the EPA sent a subsequent letter agreeing to our proposed changes.

The National Marine Fisheries Service (NMFS) sent a letter requesting six changes to the proposed MAPGP. Their recommendations and our responses are as follows:

1) Any temporary impacts to SAV beds require an individual permit rather than Category II review. The Corps has determined that few projects would propose temporary impacts to SAV beds. If NMFS has concerns with a proposal under Category II of the PGP they have the right to require an individual permit review.

2) Any moorings that qualify under Category I are not positioned over

vegetated shallows. The Corps agrees with this recommendation and will add that to the PGP.

3) The previous MAPGP allowed Category I pile-supported structures to be up to 1,000 sf. NMFS suggested that this size be decreased to 400 sf in order to provide applicants the regulatory incentive to design and construct lower impact structures. The Corps agrees with this approach and feels a 400 sf pile-supported structure is still a reasonable size to provide applicants with suitable access to the waters.

4) Category I pile-supported structures and/or vessels not be positioned over or within 50 feet of submerged aquatic vegetation (SAV). We agree that Category I structures built over SAV have the potential to more than minimally impact it. However, because of the nature of SAV to move, it is not very practicable to require applicants to locate structures farther than 50 feet away from SAV.

5) Category I language be specifically modified to provide no provisions for new or previously unauthorized fill in inland waters and wetlands that have been designated as Atlantic salmon (*Salmo salar*) essential fish habitat (EFH) by the New England Fisheries Management Council. In Massachusetts this only applies to the Merrimack and Connecticut River watersheds. Since both of these rivers are navigable, proposed main stem fill already must be reviewed under Category II. We have agreed to require Category II reporting and screening in streams that are stocked with Atlantic salmon in these two watersheds. From maps provided by the FWS, we have created a list of streams by town to be distributed within the Corps, to DEP, and local conservation commissions for use by applicants.

6) The Corps should evaluate their proposed changes to dredging volumes and the allowance of open water disposal in light of existing Section 7 consultations. The Corps met with NMFS to discuss these concerns. We informed NMFS that any special conditions regarding ocean dumping could be attached to a PGP authorization. NMFS agreed to withdraw their objection provided that EPA agrees to the changes related to dredging. As stated above, EPA has agreed to these changes.

The US Fish and Wildlife Service (FWS) sent a letter after the close of the public notice comment period. FWS requested that the Corps hold action on the public notice until the Cumulative Effect Assessment was complete. They stated that they may have comments after reviewing that document. No subsequent comment letters from FWS were received.

One comment letter favored the overall concept on the MAPGP but had some concerns with cumulative impacts of the projects involving fill. The letter suggested that the Corps incorporate a monitoring and enforcement mechanism into the PGP process in order to prevent more than minimal cumulative effects of the PGP. Inclusion of this is not necessary as the Corps already has and exercises its monitoring and enforcement authority under Section 404 of the Clean Water Act.

4. INDIVIDUAL AND CUMULATIVE IMPACTS:

(a) General Evaluation Criteria:

This document contains a general assessment of the foreseeable effects of the individual activities authorized by this PGP, the anticipated cumulative effects of those activities, and the potential future losses of waters of the United States that are estimated to occur until the expiration date of this general permit. In the assessment of these individual and cumulative effects, the terms and limits of the PGP, reporting/screening requirements, and the standard PGP general conditions are considered.

The following evaluation comprises the NEPA analysis, the public interest review specified in 33 CFR 320.4(a)(1) and (2), and the impact analysis specified in Subparts C-F of the 404(b)1 Guidelines (40 CFR 230).

The issuance of a PGP is based on a general assessment of the effects on public interest and environmental factors that are likely to occur as a result of using this PGP to authorize activities in waters of the United States. As such, this assessment must be speculative or predictive in general terms. Since PGPs authorize activities across the Commonwealth, projects eligible for PGP authorizations may be constructed in a wide variety of environmental settings. Therefore, it is difficult to predict all of the indirect impacts that may be associated with each activity authorized by this general permit. Indication that a factor is not relevant to this general permit does not necessarily mean that this general permit would never have an effect on that factor, but that it is a factor not readily identified with the authorized activity. Factors may be relevant, but have negligible adverse effects on the aquatic environment, such as the impacts of a boat ramp on floodplain values, water level fluctuations, or flood hazards. Only the reasonably foreseeable direct or indirect effects are included in the environmental assessment of this PGP. In any case, adverse effects will be controlled by the terms and conditions of this general permit. For example, Section 7 consultation will be required for activities that may affect endangered species. Based on the findings of the assessment of the previous MAPGP, we predict that the future impacts of this PGP will not be more than minimal. Also, the categories define separate projects that will meet terms and conditions to insure minimal impacts. Resource agency screening of the Category II projects also insures minimal impacts.

(b) NEPA Alternatives:

This evaluation includes an analysis of alternatives based on the requirements of NEPA, which requires a more expansive review than the Clean Water Act Section 404(b)(1) Guidelines. The alternatives discussed below are based on an analysis of the potential environmental impacts and impacts to the Corps,

Federal, and State resource agencies, general public, and prospective permittees. Since the consideration of off-site alternatives under Section 404(b)(1) does not apply to specific projects authorized by general permits, the alternatives analysis discussed below consists of a general NEPA alternatives analysis for this general permit.

(i) No Action Alternative:

The no action alternative does not meet the basic project purpose of providing an efficient, comprehensive, permitting mechanism for the regulatory program in the Commonwealth of Massachusetts, that simplifies permitting requirements and avoids duplication of Federal and State review for minimal impact activities in waters and wetlands. Streamlining and expediting Federal permitting will not occur if the MA PGP is not reissued and if Nationwide permits (NWP) are again in effect.

The PGP covers similar types of impacts to the NWP program, but the PGP provides a more efficient review process (15-30 day processing time) for the public. The PGP categories and terms and conditions, together with the joint environmental review and resource agency screening insures adequate environmental protection.

(ii) A Series of General Permits:

Issuing a series of general permits in lieu of this general permit, each covering a more narrowly defined category of work, was not considered a practicable alternative, as it would offer no improvement or advantages over this general permit. This approach would complicate communication with the public as well as administration, and cause additional paperwork for both the Corps and the regulated public.

(iii) Expanding or Reducing the Scope of the PGP:

Expanding or reducing the scope of the PGP was considered and discussed throughout its development. Scope expansion or reduction had to be considered in light of the project purpose, and had to result in a simplified process over the existing MA PGP and NWPs. As a result, PGP thresholds need to encompass the majority of NWP activities that would be revoked; and the PGP needs to incorporate procedures that substantially reduce permit review and processing time. The Corps, in coordination with the Federal resource agencies, determined early in the planning stages the revisions to the existing MA PGP.

(c) Impact Analysis:

i. General:

This PGP authorizes minimal impact work and structures in or affecting navigable waters of the U.S., the discharge of dredged or fill material into waters of the U.S., which receive the requisite State approvals, and the transportation of dredge material for the purpose of disposal in the ocean. The work must also comply with all conditions in the PGP to protect both the environment and other aspects of the public interest.

Activities listed under Category I on the attached table and satisfying all terms and conditions of this general permit do not need to be reported to the Corps. Activities not meeting the requirements under Category I, not meeting the terms and conditions of this general permit, or that are not listed under Category I on the attached table must be reported to the Corps for review under Category II or the individual permit process. For projects that are within the thresholds of Category II, if the District Engineer determines that the adverse environmental effects of a particular project are more than minimal after considering mitigation, then discretionary authority is required. If a Federal resource agency (U.S. Fish and Wildlife Service, U.S. Environmental Protection Agency, or National Marine Fisheries Service) feels that impacts to their area of expertise are more than minimal, then special conditions, mitigation, or an individual permit can be required.

(ii) Public interest review factors [33 CFR 320.4(a)(1)]:

For each of the 26 public interest review factors, the extent of the Corps consideration of expected impacts resulting from the use of this PGP is discussed, as well as the reasonably foreseeable cumulative adverse effects that are expected to occur. The Corps decision process involves consideration of the benefits and detriments that may result from the activities authorized by this PGP.

(a) Conservation: The activities authorized under this general permit may result in slight changes in natural resource characteristics of the project area. Compensatory mitigation, if required for activities authorized by this general permit, will result in the restoration, enhancement, creation, or preservation of aquatic habitats that will offset losses to conservation values. The adverse effects of the activities authorized by this general permit on conservation will be minor, since the PGP authorizes only those activities with minimal adverse effects on the aquatic environment and the Corps scope of analysis is usually limited to impacts to aquatic resources.

(b) Economics: This general permit will streamline the Federal permit process and avoid duplication with the state process, thereby providing the regulated

public with a less burdensome application process and expedited permit decisions. This has been overwhelmingly achieved throughout New England via the PGPs currently in place in each state. Public reaction to the PGPs has been favorable.

(c) Aesthetics: The visual character of some waters of the United States will be altered by the activities authorized by this PGP. The extent and perception of these changes will vary, depending on the amount of fill, the size of the structure, the nature of the surrounding area, and the public uses of the area. However, general condition 3 states that every project authorized by the PGP shall have minimal individual and cumulative adverse environmental impacts.

(d) General Environmental Concerns: Activities authorized by this PGP will affect general environmental concerns, such as water, air, noise, and land pollution. The authorized work will also affect the physical, chemical, and biological characteristics of the environment. General condition 3 states that projects authorized by this general permit shall have minimal individual and cumulative adverse environmental impacts as determined by the Corps. Compensatory mitigation may be required by the District Engineer to ensure that the net adverse effects on the aquatic environment are minimal. It is important to note that the Corps scope of analysis is usually limited to impacts to aquatic resources. General condition 23 of this general permit requires the permittee to make every reasonable effort to carry-out the construction or operation of the work authorized under this general permit 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.

(e) Wetlands: Discharges of dredged or fill material into waters of the United States as authorized by this PGP may result in the destruction of wetlands. However, general condition 3 states that every project authorized by the PGP shall have minimal individual and cumulative adverse environmental impacts. From a programmatic perspective, the five-year implementation of this PGP will have a beneficial effect on wetlands. Overall, adverse impacts to these resources are expected to be less with implementation of a PGP in lieu of the NWP. A cumulative effect assessment was done for the PGP that has been in effect in Massachusetts for the last five years. It was determined that the net environmental impacts of the PGP were not more than minimal. In general, reporting thresholds for this general permit are lower than the nationwide permit reporting thresholds. As a result, more projects will be screened/reviewed by both state and Federal resource and regulatory agencies. This additional expedited review will ensure that impacts to wetlands are either avoided or minimized. Also, applicants tend to modify projects to meet the non-reporting thresholds. PGP general conditions are designed to ensure that impacts to wetlands for non-reporting projects are avoided and minimized to the maximum extent practicable. In addition, this general permit requires individual permit review whenever a concern that cannot be resolved through

mitigation, special conditions, or project modification is raised by any of the resource agencies. Environmental protection safeguards are in place in the PGP that do not exist under the current NWP program.

Over the five-year life of this general permit, adverse impacts to wetland functions and values within the Commonwealth of Massachusetts are expected to occur on a project-by-project basis. This is unavoidable and PGP conditions have been designed to ensure that impacts will be minimal individually and cumulatively.

Wetlands provide habitat, including foraging, nesting, spawning, rearing, and resting sites, for aquatic and terrestrial species. The destruction of wetlands may alter natural drainage patterns. Wetlands reduce erosion by stabilizing the substrate. Wetlands also act as storage areas for stormwater and floodwaters. Wetlands may act as groundwater discharge or recharge areas. The loss of wetland vegetation will adversely affect water quality because these plants trap sediments, pollutants, and nutrients and transform chemical compounds. Wetland vegetation also provides habitat for microorganisms that remove nutrients and pollutants from water. Wetlands, through the accumulation of organic matter, act as sinks for some nutrients and other chemical compounds, reducing the amounts of these substances in the water. The PGP can only be used for projects that will not have more than minimal individual or cumulative impacts on these resources.

(f) Historic and Cultural Properties: Applicants with Category II projects will be submitting a copy of their application materials to the Massachusetts State Historic Preservation Officer, the Wampanoagam Tribal Historic Preservation Officer, and the Narragansett Indian Tribal Historic Preservation officer to be reviewed for the presence of historic/archaeological resources in the permit area. General condition 6 states that activities authorized by this general permit shall comply with Section 106 of the National Historic Preservation Act. The historic preservation officers will notify the Corps if the proposed work will have an effect on any of these resources. Also, if during construction of work authorized, the permittee encounters a previously unidentified archaeological or other cultural resource within the permit area, he/she shall stop work and immediately notify the District Engineer and the SHPO.

(g) Fish and Wildlife Values: This PGP authorizes activities in all waters of the United States that provide habitat to many species of wildlife. Activities authorized by this PGP may alter the habitat characteristics of open waters, streams, and wetlands, decreasing the quantity and quality of wildlife habitat. Wetland and riparian vegetation provides food and habitat for many species, foraging areas, resting areas, corridors for wildlife movement, and nesting and breeding grounds. From a programmatic perspective, the five-year implementation of this PGP will have a beneficial effect on wildlife. Overall,

adverse impacts to this resource are expected to be less with implementation of a PGP in lieu of the nationwide permit program.

(h) Flood Hazards: Activities authorized by this PGP will result in minor impacts on flooding. Much of the land area within 100-year floodplains is upland and outside of the Corps scope of review.

(i) Floodplain Values: Activities authorized by this PGP will have negligible adverse effects on floodplain values because most fills are relatively small. The fish and wildlife habitat values of floodplains may be adversely affected by activities authorized by this PGP, by modifying or eliminating areas used for nesting, foraging, resting, and reproduction. The water quality functions of floodplains may also be adversely affected by these activities. Again, much of the land area within 100-year floodplains is upland and outside of the Corps scope of review.

(j) Land Use: Activities authorized by this PGP will result in minor, unavoidable changes in land use. Since the primary responsibility for land use decisions is held by State, local, and tribal governments, the Corps scope of analysis is limited to significant issues of overriding national importance, such as navigation and water quality.

(k) Navigation: Activities authorized under the PGP will have no adverse impacts on navigation (general condition 13).

(l) Shore Erosion and Accretion: The activities authorized by this PGP will have negligible effects on erosion and accretion processes. General condition 18 states that adequate sedimentation and erosion control measures shall be installed and properly maintained. It also requires that all exposed soil and other fills shall be permanently stabilized.

(m) Recreation: Activities authorized by this general permit will have little negative effect on the recreational uses of the area. The PGP allows for the construction and use of private recreational structures and floats. The size and impact of such structures shall be minimal so as not to prevent others from using the public waters.

(n) Water Supply and Conservation: Activities authorized by this PGP will have negligible effects on surface water and groundwater supplies. As required by general condition 20, all activities involving any discharge of pollutants into waters of the United States authorized under this PGP shall be consistent with the Massachusetts Stormwater Management Policy, applicable water quality standards, effluent limitations, standards of performance, prohibitions, pretreatment standards and management practices established pursuant to the Clean Water Act (33 U.S.C. 1251), and applicable state and local laws.

Compensatory mitigation may be required for activities authorized by this PGP, which will help improve the quality of surface waters.

(o) Water Quality: From a programmatic perspective, the five-year implementation of this PGP is expected to have a beneficial effect on water quality. A greater number of projects will be screened by Federal and state resource agencies under the PGP program. Therefore, adverse impacts to water quality should be avoided or minimized. State agencies will participate in this screening process specifically to address water quality and coastal zone management consistency concerns.

Over the five-year life of this general permit, adverse water quality impacts within the Commonwealth of Massachusetts are expected to occur on a project-by-project basis. These impacts are unavoidable with many developments. However, PGP conditions have been designed to ensure that impacts will be minimal both individually and cumulatively. The cumulative effect assessment for the PGP that has been in effect in Massachusetts for the last five years found that this has been the case for the existing PGP.

(p) Energy Needs: The activities authorized by this PGP may be associated with activities that increase energy consumption in the area, but these activities are likely to be outside the Corps scope of analysis. During construction, there will be temporary increases in energy consumption.

(q) Safety: The activities authorized by this general permit will be subject to Federal, State, and local safety laws and regulations. Therefore, this general permit will not adversely affect the safety of the project area.

(r) Food and Fiber Production: Activities authorized by this PGP will have minor effects on food and fiber production. Some of these activities may be beneficial and improve agricultural production.

(s) Mineral Needs: Activities authorized by this general permit may increase the demand for aggregates and stone that may be used for fill and bank stabilization projects. Stream crossings and other activities may increase the demand for other building materials, such as steel, aluminum, and copper, which are made from mineral ores and may be used to construct culverts.

(t) Consideration of Property Ownership: This PGP complies with 33 CFR 320.4(g), which states that an inherent aspect of property ownership is a right to reasonable private use. This general permit provides expedited review for projects that will have minimal impacts on waters of the United States, provided the activity complies with the terms and conditions of this general permit.

(iii) 404(b)(1) Guidelines Impact Analysis (Subparts C-F):

(a) Substrate: Discharges of dredged or fill material into waters of the United States will alter the substrate of those waters, usually replacing the aquatic area with dry land, and changing the physical, chemical, and biological characteristics of the substrate. The original substrate will be removed or covered by other material, such as concrete, asphalt, soil, gravel, etc. Temporary fills may be placed upon the substrate, but must be removed upon completion of the work (see General Conditions 15 and 16). Maintenance dredging and excavation may also alter the substrate of the waterbody, by removing accumulated sediment that may have different characteristics from the underlying sediment.

(b) Suspended particulates/turbidity: Depending on the method of construction, soil erosion and sediment control measures, equipment, composition of the bottom substrate, and wind and current conditions during construction, fill material placed in open waters will temporarily increase the turbidity of the water. Reporting and screening is required for all Category II activities authorized by this PGP, which will allow district engineers to review each activity that may exceed minimal impacts on the aquatic environment. Materials will be resuspended in the water column during removal of temporary fills or the disposal of dredged material into open water. The plume generated will normally be limited to the immediate vicinity of the disturbance and should dissipate shortly after each phase of the construction activity. General condition 1 requires the permittee to stabilize exposed soils and other fills, which will reduce the adverse effects of turbidity.

(c) Water: The discharge of dredged or fill material and the dredging of Navigable Waters can affect some characteristics of water, such as water clarity, chemical content dissolved gas concentrations, pH, and temperature. These activities can change the chemical and physical characteristics of the waterbody by introducing suspended or dissolved chemical compounds or sediment. Changes in water quality can affect the types and quantities of organisms inhabiting the aquatic area. Water quality certification is required for discharges into waters of the United States authorized by this general permit, which will ensure that the work does not violate applicable water quality standards. A Section 402 permit may be required to ensure compliance with the requirements of the National Pollutant Discharge Elimination System program. Only dredged material found suitable for open water disposal by the Corps and EPA will be authorized under the PGP.

(d) Current patterns and water circulation: Activities authorized by this PGP may adversely affect the movement of water in the aquatic environment, but these effects will be negligible. All activities under Category II of this PGP require reporting to and screening by the District Engineer, which will ensure that adverse effects to current patterns and water circulation are minimal.

(e) Normal water level fluctuation: The activities authorized by this PGP will have little or no adverse effects on normal patterns of water level fluctuations due to tides and flooding.

(f) Salinity gradients: The activities authorized by this PGP will have negligible effects on salinity gradients.

(g) Threatened and endangered species: General condition 8 of this general permit states that no activity, which 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, is authorized under this general permit. This condition also states that 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.

As part of the Category II screening process, the US Fish and Wildlife Service and National Marine Fisheries Service review each project to determine whether potential threatened or endangered species or critical habitat exist in the project area. This helps the District Engineer determine if a proposed activity will affect endangered species or their critical habitat and, if necessary initiate consultation. However, if the resource agency feels that a project has a high potential for impacts to threatened or endangered species or critical habitat, Section 7 consultation or an individual permit may be required.

Based on the above, the Corps has determined that the activities authorized by this PGP will not jeopardize the continued existence of any listed threatened or endangered species or result in the destruction or adverse modification of designated critical habitat.

(h) Fish, crustaceans, mollusks, and other aquatic organisms in the food web: All activities with the potential to have more than minimal impacts on the aquatic environment require reporting to the Corps and screening by the Corps and Federal resources agencies. All coastal fills and dredged material disposal must be reported and screened with the Federal resource agencies under Category II. This will ensure that adverse effects to fish and other aquatic organisms in the food web are minimal. Fish and other motile animals will avoid the project site during construction. Sessile or slow-moving animals in the path of discharges, equipment, and building materials will be destroyed. Some aquatic animals may be smothered by the placement of dredged or fill material. Motile animals will return to those areas that are temporarily

impacted by the work and restored or allowed to revert back to preconstruction conditions. Aquatic animals will not return to sites of permanent fills. Benthic and sessile animals are expected to recolonize sites after areas temporarily impacted by the work are restored or are expected to relocate to other suitable habitat.

Under this general permit, Category I activities are prohibited during specific times of the year. In-stream work is limited to July 1 to October 1 to allow breeding and migration of various in-stream wildlife species. Dredging activities authorized under Category I must be conducted between November 1 and January 15 for similar reasons (only maintenance dredging is allowed under Category I). Projects authorized under Category II may have time-of-year restrictions as special conditions required by a Federal resource agency, as determined on a case-by-case basis.

General condition 21 states that 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.

(i) Other wildlife: Activities authorized by this general permit will have adverse effects on other wildlife associated with aquatic ecosystems, such as resident and transient mammals, birds, reptiles, and amphibians, through the destruction of aquatic habitat, including breeding and nesting areas, escape cover, travel corridors, and preferred food sources. These impacts will be minor, otherwise the Corps or Federal resource agencies will require an individual permit. This PGP does not authorize activities that jeopardize the continued existence of Federally-listed endangered and threatened species. Compensatory mitigation, including vegetated buffers, may be required for activities authorized by this PGP, which will help offset losses of aquatic habitat for wildlife.

(j) Special aquatic sites: The potential impacts to specific special aquatic sites are discussed below. If the Corps or any of the Federal Resource agencies feel that impacts to any special aquatic site will be more than minimal, they may require an individual permit review.

(1) Sanctuaries and refuges: The activities authorized by this PGP will have minimal adverse effects on waters of the United States within sanctuaries or refuges designated by Federal or States laws or local ordinances. General condition 7 states that activities authorized by this PGP shall not impinge upon the value of any National Wildlife Refuge, National Forest, National Marine Sanctuary or any area administered by the National Park Service. The District Engineer can exert discretionary authority and require an individual permit for specific projects in waters of the United States in sanctuaries and refuges if they believe that those

activities will result in more than minimal adverse effects on the aquatic environment.

(2) Wetlands: The activities authorized by this PGP will have minimal adverse effect on wetlands. The District Engineer will review projects that are eligible for Category II to ensure that the adverse effects to the aquatic environment are minimal. Projects that are eligible for this general permit under Category I have been predetermined to have minimal impacts, provided all applicable state and local authorizations have been issued. See paragraph (e) in Section 4(c)(ii), above, for a more detailed discussion of impacts to wetlands.

(3) Mud flats: The activities authorized by this PGP will have minor adverse effects on mud flats. No fill in mud flats or any other special aquatic site is authorized under Category I in tidal areas. Therefore, all work in mud flats must be reported to the Corps and screened by the Corps and Federal resource agencies. If any of these agencies feels that impacts to any special aquatic site will be more than minimal they may request an individual permit review.

(4) Vegetated shallows: The activities authorized by this PGP may affect vegetated shallows in tidal waters. Any work in, over, or through vegetated shallows in tidal waters is not eligible under Category I and, therefore, must be reported to the Corps and screened by the Corps and Federal resource agencies. The District Engineer will review all proposed activities to determine if those activities will result in minimal adverse effects on the aquatic environment. District engineers can exercise discretionary authority to require the project proponent to obtain an individual permit if the vegetated shallows are of high value.

(5) Coral reefs: The activities authorized by this PGP will have minimal effects on coral reefs.

(6) Riffle and pool complexes: The activities authorized by this PGP will have minimal effects on riffle and pool complexes. Activities in riffle and pool complexes may be authorized by this PGP. All such activities must be reported to the Corps and screened by the Corps and Federal resource agencies under Category II. If the riffle and pool complex is of high value, the District Engineer can exercise discretionary authority to require the project proponent to obtain an individual permit.

(k) Municipal and private water supplies: See paragraph (n) in Section 4(c)(ii), above, for a discussion of potential impacts to water supplies.

(l) Recreational and commercial fisheries: The activities authorized by this PGP may adversely affect waters of the United States that act as habitat for

populations of economically important species of fish and shellfish. All activities that are authorized under this general permit and have the potential to have more than minimal impacts on the aquatic environment, require reporting to the Corps and screening by the Corps and Federal resource agencies. General condition 21 will ensure that the authorized work does not adversely affect concentrated shellfish populations or important spawning areas. Also, any work in potential Atlantic salmon (*Salmo salar*) habitat, which includes the Merrimack River and streams in the Connecticut River watershed that area stocked with Atlantic salmon, must be reported to the Corps and screened under Category II.

(m) Water-related recreation: See paragraph (m) in Section 4(c)(ii) above.

(n) Aesthetics: See paragraph (c) in Section 4(c)(ii), above.

(o) Parks, national and historical monuments, national seashores, wilderness areas, research sites, and similar areas: General condition 7 states that activities authorized by this general permit shall not impinge upon the value of any National lands. This PGP can be used to authorize activities in parks, national and historical monuments, national seashores, wilderness areas, and research sites if the manager or caretaker wants to conduct work in waters of the United States and those activities result in minimal adverse effects on the aquatic environment.

(iv) Cumulative Impacts:

A cumulative effect assessment of the PGP that has been in effect in Massachusetts for the last five years was done (see attached). It was determined that the cumulative impacts were not more than minimal. Since the new PGP requires that the Corps and Federal resource agencies screen more projects, it is expected that the cumulative impacts of it will also not be more than minimal.

The findings in the Cumulative Effect Assessment for the existing PGP showed, that the Corps will issue authorizations for approximately 1000 actions under Category I and 700 actions under Category I of the PGP. Approximately 25% of these authorizations were for roads or bridges, approximately 25% were for private piers, docks, or floats, approximately 13% were for bank stabilization or water-holding structures, and approximately 12% for other boating related work. Approximately 30% of all PGP authorizations issued by the Corps involved no fill. The PGP actions will temporarily or permanently impact a total of approximately 135 acres of waters and wetlands. The average fill for Category II projects was approximately 0.25 acres. Corps-required compensatory mitigation (note that the state requires 1:1 mitigation for all fill) accounted for approximately 10 acres of wetlands restored, enhanced, or created. It is expected that the new PGP will have similar impacts.

(d) Additional Public Interest Review Factors (33 CFR 320.4(a)(2)):

(i) Relative extent of the public and private need for the proposed structure or work (33 CFR 320.4(a)(2)):

This PGP authorizes minimal impact work and structures in or affecting Navigable Waters of the United States and the discharge of dredged or fill material into Waters of the United States, which have minimal adverse effects on the aquatic environment, individually and cumulatively. These activities satisfy public and private needs related to larger projects, such as residential and commercial developments, agricultural activities, stormwater management facilities, and utilities. The need for this PGP is based upon the large number of these activities that occur annually with minimal adverse effects on the aquatic environment. Also, because of coordination with MADEP, this PGP will reduce duplication of effort with the state for small projects.

(ii) Where there are unresolved conflicts as to resource use, the practicability of using reasonable alternative locations and methods to accomplish the objective of the proposed structure or work:

Most situations in which there are unresolved conflicts concerning resource use arise when environmentally sensitive areas are involved (e.g. special aquatic sites, including wetlands) or where there are competing uses of a resource. The nature and scope of the activity, when planned and constructed in accordance with the terms and conditions of this PGP, reduces the likelihood of such conflicts. In the event that there is a conflict, this general permit contains provisions that are capable of resolving the matter (see Sections 1 and 3 of this document).

General Condition 14 requires applicants to avoid and minimize discharges of dredged or fill material into waters of the United States to the maximum extent practicable on the project site. Consideration of off-site alternative locations is not required for projects that are authorized by general permits. General permits authorize activities that have minimal individual and cumulative adverse effects on the aquatic environment and overall public interest. The District Engineer will exercise discretionary authority and require an individual permit if the proposed work will result in more than minimal adverse environmental effects on the project site. The consideration of off-site alternatives can be required during the individual permit process.

(iii) The extent and permanence of the beneficial and/or detrimental effects which the proposed structure or work is likely to have on the public and private uses to which the area is suited:

The nature and scope of the work authorized by this general permit will most

likely restrict the extent of the beneficial and detrimental effects to the area immediately surrounding the work or structure. Activities authorized by this PGP will have minimal adverse effects on the aquatic environment.

As previously stated, the terms, conditions, and provisions of this general permit were developed to ensure that individual and cumulative adverse environmental effects are minimal. Specifically, PGPs do not obviate the need for the permittee to obtain other Federal, State, or local authorizations required by law. The PGPs do not grant any property rights or exclusive privileges (see Section 3 of this document and 33 CFR 330.4(b) for further information). Additional conditions, limitations, restrictions, and provisions for discretionary authority, as well as the ability to include activity-specific conditions on this PGP, will provide further safeguards to the aquatic environment and the overall public interest. There are also provisions to allow suspension, modification, or revocation of this general permit. Refer to Sections 1 and 3 of this document for further information on procedures.

5. EVALUATION OF COMPLIANCE WITH THE GUIDELINES PROMULGATED UNDER SECTION 404(b)(1) OF THE CLEAN WATER ACT (40 CFR 320):

The 404(b)(1) compliance criteria for general permits are contained in 40 CFR 230.7.

(a) Evaluation Process (40 CFR 230.7(b)(1)):

(i) Alternatives (40 CFR 230.1(a)):

General Condition 14 requires prospective permittees to avoid and minimize discharges or dredged or fill material into waters of the United States to the maximum extent practicable on the project site. The consideration of off-site alternatives is not directly applicable to general permits.

(ii) Prohibitions (40 CFR 230.10(b)):

This PGP authorizes discharges of dredged or fill material into waters of the United States, which require Section 401 water quality certification. State water quality certification requirements will be met in accordance with the procedures contained in 33 CFR 330.(c).

No toxic discharges will be authorized by this PGP. General condition 20 states that the material must be free from toxic pollutants in toxic amounts.

This PGP does not authorize activities that jeopardize the continued existence of any listed threatened and endangered species or result in the destruction or adverse modification of critical habitat. Refer to General Condition 8 and to 33 CFR 330.4(f) for information and procedures.

This PGP will not authorize the violation of any requirement to protect any marine sanctuary. Refer to Section 3 of this document for further information.

(iii) Findings of Significant Degradation (40 CFR 230.1(c)):

Potential impact analysis (Subparts C-F):

The potential impact analysis specified in subparts C-F is contained in Section 4 of this document. Mitigation required by the District Engineer will ensure that the net adverse effects on the aquatic environment are minimal. Also, based on the findings of the cumulative effect assessment for the previous PGP, we can assume that the impacts of this PGP will not be more than minimal.

Evaluation and testing (Subpart G):

Because the terms and conditions of this general permit specify the types of discharges that are authorized, as well as those that are prohibited, individual evaluation and testing for the presence of contaminants will normally not be required. If a situation warrants, provisions of this general permit allow the District Engineer to further specify authorized or prohibited discharges and/or require testing.

(iv) Factual determinations (40 CFR 230.11):

The factual determinations required in 40 CFR 320.11 are contained in Section 4 of this document.

(v) Appropriate and practicable steps to minimize potential adverse impacts (40 CFR 230.10(d)):

As demonstrated by the information contained in this document, as well as the terms, conditions, and provisions of this PGP, actions to minimize adverse effects (Subpart H) have been thoroughly considered and incorporated into the PGP. General Condition 14 requires prospective permittees to avoid and minimize activities in waters of the United States to the maximum extent practicable on the project site. Compensatory mitigation required by the District Engineer will ensure that the net adverse effects on the aquatic environment are minimal.

(b) Evaluation Process (40 CFR 230.7(b)(2)):

(i) Description of permitted activities:

As indicated by the text of this PGP, by Section 1 of this document, and by the discussion of potential impacts in Section 4, the activities authorized by this

PGP are sufficiently similar in nature and environmental impact to warrant authorization under a single general permit. All projects authorized under the PGP will not have more than minimal impacts. The nature and scope of the impacts are controlled by the terms and conditions of this general permit.

If a situation arises in which the activity requires further review, or is more appropriately reviewed under the individual permit process, provisions of this general permit allow the District Engineer to take such action.

(c) Cumulative effects (40 CFR 230.7(b)(3)):

The cumulative effects, including the number of activities likely to be authorized under this PGP, are discussed in Section 4 of this document. If a situation arises in which the proposed activity requires further review, or is more appropriately reviewed under the individual permit process, provisions of this general permit allow the District Engineer to take such action.

6. Final Determinations:

(a) Finding of No Significant Impact:

Based on the information contained in this document, the Corps has determined that the issuance of this PGP will not have a significant impact on the quality of the human environment. Therefore, the preparation of an Environmental Impact Statement is not required.

(b) 404(b)(1) Compliance:

This PGP has been evaluated for compliance with the Section 404(b)(1) Guidelines, including Subparts C through G. Based on the information in this document, the Corps has determined that the discharges authorized by this PGP comply with the 404(b)(1) Guidelines, with the inclusion of appropriate and practicable conditions, including mitigation, necessary to minimize adverse effects on affected aquatic ecosystems. The activities authorized by this PGP will not result in significant degradation of the aquatic environment.

(c) Public Interest Determination:

In accordance with the requirements of 33 CFR 320.4, the Corps has determined, based on the information presented in this document, that the issuance of this PGP is not contrary to the public interest.

(d) Section 176(c) of the Clean Air Act General Conformity Rule Review:

This PGP has been analyzed for conformity applicability pursuant to regulations implementing Section 176(c) of the Clean Air Act. It has been

determined that the activities authorized by this permit will not exceed *de minimis* levels of direct emissions of a criteria pollutant or its precursors and are exempted by 40 CFR 93.153. Any later indirect emissions are generally not within the Corps continuing program responsibility and generally cannot be practicably controlled by the Corps. For these reasons, a conformity determination is not required for this PGP.

(e) Public Hearing:

No requests for a public hearing were received. Therefore, a public hearing was not needed for this permit.

\_\_\_\_\_  
DISTRICT ENGINEER

\_\_\_\_\_  
DATE

## **MASSACHUSETTS PROGRAMMATIC GENERAL PERMIT CUMULATIVE EFFECT ASSESSMENT**

### **Purpose**

The purpose of this evaluation is to assess the overall environmental effect associated with the Massachusetts Programmatic General Permit (MAPGP) from March 1, 1995 to May 31, 1999, including a determination of whether or not the cumulative effects have been more than minimal. In its December 28, 1994 Environmental Assessment and Statement of Findings (EA/SOF), the Corps found that the trial MAPGP in 1994 did not have more than minimal individual and cumulative effects. It also predicted, based on the number of projects and types of impacts expected, that the current MAPGP would not have more than minimal individual or cumulative effects. In accordance with NEPA, the MAPGP works towards eliminating duplication of state and local permitting procedures where sound environmental programs are in place.

This assessment will be used, in part, to make any necessary modifications to the upcoming reissuance of the MAPGP. Any problems or weaknesses found through this assessment will be discussed with the State and Federal agencies involved in the reissuance process so that any necessary modification can be implemented.

### **Methodology**

The 1994 predictive assessment of the cumulative effects associated with the MAPGP contained in the Corps EA/SOF was based on impacts attributable to the trial MAPGP in 1994 and the other general permits (including Nationwide Permits) before that, on an understanding of the Massachusetts wetlands program, on comments from the public and state and Federal resource agencies, and on safeguards built into the MAPGP. This assessment of impacts over the last five years is based on facts compiled from the Corps database (RAMS), the Massachusetts Department of Environmental Protection (MADEP), and from interviews with staff from the Federal agencies, the Corps, and the MADEP who work with this program on a daily basis.

This assessment attempts to quantify the number and types of projects approved, describe project distribution across the state, and describe the impacts of projects approved under the MAPGP over the last five years. Permit information from the Corps Regulatory database (RAMS) was retrieved to determine the type of authorization issued (Category I or II), the town in which the authorization was issued, and

the type of work for which the authorization was issued. Site visits were randomly made to approximately 5% of all the projects that received authorization from the Corps under the MAPGP in order to assess whether projects had minimal impacts.

## **Findings**

A review of the RAMS database (see attached MAPGP Facts and Figures report) revealed that there were 1667 MAPGP authorizations, both Category I and II, issued by the Corps between March 1, 1995 and May 31, 1999.

A geographic distribution of the authorizations issued by the Corps showed that significantly more authorizations were issued in the Southeastern region of Massachusetts, particularly on Cape Cod and the Islands, than in any other area of the state. Correlated to this finding, approximately 29% of the authorizations were for work related to boating activities, such as piers, dredging, and fills for boat ramps.

Crossings for roads and bridges also constituted a notable percent of authorizations issued, most of which were for the Massachusetts Highway Department. For Category II authorizations overall more than 50% had no fill at all and more than 70% had less than 0.1 acres of fill. For the Category II projects that had fill, the average amount was approximately 0.25 acres.

## **MAPGP versus Nationwide Permit (NWP) Program**

Many of the former nationwide permits were non-reporting. For projects that were reported, very limited data was kept in the RAMS database. Therefore, a direct comparison of impacts between the prior nationwide permit program and the MAPGP is not possible. However, since the NWPs were revoked and replaced by the MAPGP, it is safe to assume that the MAPGP covers similar types of impacts to the NWP program. In addition, the safeguards incorporated into the MAPGP have helped insure a higher level of joint environmental review (Federal and state) compared to the former NWP program.

## **Compliance and Mitigation**

A review of the inspection reports done by the Corps indicates that the majority of the projects authorized under the MAPGP were executed in compliance with the permit. The most common comment by the project managers/inspectors was that both the location plans and the site plans were not clear, particularly for the purpose of conducting a compliance inspection. Of the projects selected, more than 75% of those

constructed were found to be clearly in compliance both with the plans authorized and the terms and conditions of the PGP. For 7% we were unable to determine compliance because of the type of work done or unclear plans.

The random sample of projects inspected revealed that most of the authorizations were for private, residential docks or piers with no fill. Some were constructed over tidal wetlands but most were found to have no apparent impact on the wetland. For the piers constructed over tidal wetlands, if a minimum 1:1 height:width ratio was proposed, the Federal resource agencies had no objections.

Of all the MAPGP authorizations issued since March 1, 1995, six were known by the Environmental Resources Unit to have required compensatory mitigation by the Corps. A total of approximately 10 acres were proposed by this mitigation. Of the six mitigation projects, four were inspected. One of the projects was not constructed and, therefore, neither was the mitigation. Two mitigation sites were found to be functioning as wetlands, as planned. One was found to be unsuccessful and did not compensate for the authorized impacts.

## **Conclusion**

Since the enactment of Section 404, the New England District has administered a strong Regulatory program which emphasizes both efficient processing and strong environmental protection. Other Corps districts across the country have looked to New England District for an example of how to efficiently and effectively regulate wetland/waterway impacts through the PGP process. The number of projects and types of impacts that were predicted in the 1995 Environmental Assessment for the current MAPGP were found to occur. Over half of the projects did not involve any fill. The average fill area for fill projects was 0.25 acres. Most fill projects were associated with roadways, averaging approximately 0.13 acres of fill. Non-fill projects were designed to avoid or minimize impacts on sensitive resources, particularly coastal projects. Based on a sample of projects inspected, most projects were built in compliance with the authorized plan and the terms and conditions of the MAPGP. The few instances of either authorized plan or PGP noncompliance were minor, such as insufficient sedimentation and erosion control measures, and were rapidly corrected by the permittee. It is concluded that the net environmental effect of the MAPGP over the five years was not more than minimal.

**Recommendations**

In light of the discussions contained in this study, and particularly in consideration of the comments of the Federal resource agencies, it appears appropriate to reissue the MAPGP with minor modifications to increase its efficiency.

Jody Mauditt, PM 8/31/99  
Prepared by date

Christine Godfrey 8/31/99  
Approved by date  
Section Chief

**MAPGP Facts and Figures for period 3/1/95 – 5/31/99**  
For authorizations issued by the Corps

**MAPGP Categories**

Category I actions	= 719 actions
Category II actions	= <u>948</u> actions
<b>Total</b>	=1667 actions

**Regional Distribution (using MADEP Regions)** (for Categories I and II)

Central Region	= 169 actions
Western Region	= 214 actions
Northeast Region	= 446 actions
Southeast Region	= 825 actions (474 on Cape Cod & Islands)

**Area of fill and compensation (approx.)**

Wetlands filled under Category I	= 15 acres
Wetlands filled under Category II	= 85 acres
Waters filled under Category I	= 5 acres
Water filled under Category II	= 30 acres
Wetlands gained by compensatory mitigation	= <u>-10</u> acres
<b>Total acres lost (approx.)</b>	=125 acres

**Major Categories of Work Type**

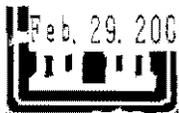
Cranberry Bogs	= 9 actions
Landfills	= 13 actions
Ponds	= 19 actions
Wetland Restoration	= 23 actions
Industrial Development	= 25 actions
Aquaculture	= 32 actions
Culverts, Ditches, Canals, Tunnels	= 39 actions
Residential Development	= 42 actions
Dredging	= 86 actions
Pipes	= 97 actions
Boat ramp, Boathouse, Marina, Moorings, Wharf	= 134 actions
Bank/Water-holding structures	= 174 actions
Pier/Dock, Float	= 358 actions
Roads, Bridges	= 414 actions

**Category II projects permitted within various ranges of work size**

0 acre impacts	=507 actions
0.0001-0.099 acre impacts	=173 actions
0.1-0.249 acre impacts	=106 actions
0.25-0.49 acre impacts	= 72 actions
0.5-0.74 acre impacts	= 37 actions
0.75-0.99 acre impacts	= 54 actions

**Compliance categories for randomly inspected projects [94 actions]**

Not constructed	=	17 actions
Plan and PGP terms and conditions compliance	=	58 actions
Plan non-compliance but PGP compliance	=	5 actions
Plan compliance but PGP terms and conditions non-compliance	=	1 action
Plan compliance but PGP terms and conditions non-compliance	=	5 actions
Plan non-compliance and PGP terms and conditions non-compliance	=	1 action
Unable to identify impact areas to determine compliance	=	6 actions
Incorrectly in RAMS as Category I, no permit required	=	1 action



**FACSIMILE TRANSMITTAL HEADER SHEET**

For use of this form, see AR 25-1 1: the proponent agency is ODISC4

COMMAND/ OFFICE	NAME/ OFFICE SYMBOL	OFFICE TELEPHONE NO. (AUTOVON/Comm.)	FAX NO. (AUTOVON/Comm.)
FROM: <i>TMc Bride</i>	CENAD-ET-O		

TO: *Jody Gaudet* Phone #: *978 318 8860*  
 FAX #: *978 318 8303*

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REMARKS

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DEPARTMENT OF THE ARMY  
NORTH ATLANTIC DIVISION, CORPS OF ENGINEERS  
FORT HAMILTON MILITARY COMMUNITY  
GENERAL LEE AVENUE  
BROOKLYN, NY 11252-6700

IN REPLY REFER TO

28 FEB 2000

CENAD-ET-O (1145)

MEMORANDUM FOR Commander, New England District ATTN: CENAL-CO

SUBJECT: Request for Revocation of Nationwide Permits in Massachusetts

1. Reference is made to the following:

- a. Title 33 CFR Part 330.4(e) and .5
- b. CENED Memorandum, dated 29 December 1994, Subject: Revocation of Nationwide Permits (NWP's). Effective in Massachusetts 1 March 1995.
- c. CENAL-CO-R Memorandum, dated 19 October 1999, Subject: Revocation of Nationwide Permits (NWP's) in Massachusetts.
- d. CENAL issuance, 4 January 2000, of new Department of the Army Programmatic General Permit for the Commonwealth of Massachusetts.

2. Reference 1a above provides the Division Engineer with the authority to revoke NWP's on a statewide level and by Reference 1b, CENED on 29 December 1994, revoked NWP's in Massachusetts for 5 years until 1 March 2000.

3. We have completed a review of your 19 October 1999 request to revoke selected NWP's in the Commonwealth of Massachusetts based on the upcoming expiration of your revocation of these permits five years ago (Ref 1b) and your recent issuance of a new Department of the Army Programmatic General Permit for the Commonwealth of Massachusetts (Ref 1d).

4. Based on the references above, I am extending your prior revocation to coincide with the extended life of the current Nationwide Permits. When new Nationwide Permits are promulgated by HQUSACE, we will entertain a request to suspend the new ones indefinitely in lieu of surrogate regional general permits, provided they are at least as inclusive as the new Nationwide Permits they replace. POC's Carol Coch/Tom McBride 718 491 8728/8726.

GEORGE C. CLARKE  
COL. EN  
Acting Commander



REPLY TO  
ATTENTION OF

**DEPARTMENT OF THE ARMY**  
NEW ENGLAND DISTRICT, CORPS OF ENGINEERS  
696 VIRGINIA ROAD  
CONCORD, MASSACHUSETTS 01742-2751

January 7, 2000

Regulatory Branch  
CENAE-CO-R-199901470

Ms. Lois Bruinooge  
Division of Wetlands and Waterways  
Massachusetts Department of Environmental Protection  
One Winter Street  
Boston, Massachusetts 02108

Dear Ms. Bruinooge:

This letter is in reference to the renewal of the Massachusetts Programmatic General Permit (MAPGP). The Corps of Engineers will release a public notice announcing the reissuance of the MAPGP on January 11, 2000. A copy of the public notice and the MAPGP entitled, "Department of the Army Programmatic General Permit, Commonwealth of Massachusetts," are enclosed.

Also, enclosed are the checklists to be distributed to permit applicants for determination of whether a Corps permit is required. We appreciate your time and effort in this endeavor and are confident that the renewed PGP will further streamline and simplify the Corps permit process. If you have any comments or questions please feel free to contact Ms. Jody Gaudet at (978) 318-8860.

Sincerely,

Christine Godfrey  
Chief, Policy & Technical Support Section  
Regulatory Branch

Enclosures

*M*  
*111*

*for* *PFH*  
*111*

## Gaudet, Jody A NAE

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**From:** Creamer, Thomas M NAD02  
**Sent:** Tuesday, January 04, 2000 10:47 AM  
**To:** Gaudet, Jody A NAE  
**Cc:** Coch, Carol A NAD02; Lawless, William F NAE; Godfrey, Christine A NAE; Creamer, Thomas M NAD02  
**Subject:** RE: NWGPs revocation in Massachusetts

Jody:  
I'll know for sure, one way or the other, tomorrow A.M.  
Please fax us copy of signed MA programmatic general permit.  
Please use fax number 718-491-8869.  
Tom Creamer

-----Original Message-----

**From:** Gaudet, Jody A NAE  
**Sent:** Tuesday, January 04, 2000 10:38 AM  
**To:** Creamer, Thomas M NAD02  
**Cc:** Coch, Carol A NAD02; Lawless, William F NAE; Godfrey, Christine A NAE  
**Subject:** NWP revocation in Massachusetts

Tom,

The Massachusetts Programmatic General Permit (MAPGP) was signed today and will be effective on January 11. The public notice that we plan to send out on January 11 will announce the reissuance of the MAPGP and the revocation of the nationwide permits in Massachusetts. Will this give you enough time to get the revocation signed by Gen. Rhoades?

Thank you,  
Jody Gaudet



**US Army Corps  
of Engineers**  
New England District

**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:						
Jody Gaudet		CENAE-10-R	(978) 318-8860		(978) 318-8303	
TO:						
Tom Creamer		CENAD			(718) 491-8864	
CLASSIFICATION	PRECEDENCE	NO. PAGES (including this Header)	DATE-TIME	MONTH	YEAR	RELEASER'S SIGNATURE
		23	1500nm 1/4/00			Jody Gaudet

REMARKS signed MAPGP

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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.



DEPARTMENT OF THE ARMY  
NEW ENGLAND DISTRICT, CORPS OF ENGINEERS  
696 VIRGINIA ROAD  
CONCORD, MASSACHUSETTS 01742-2751

REPLY TO  
ATTENTION OF

January 3, 2000

Regulatory Branch  
CENAE-CO-R-199901470

Mr. David Therrien  
New England Electric System  
55 Bearfoot Road  
Northborough, Massachusetts 01532-1555

Dear Mr. Therrien:

This is in response to your letter dated November 30, 1999 requesting a written determination as to whether the Corps of Engineers interprets the installation of swamp mats in wetlands for construction access to be a discharge of fill material. In your letter you also requested that we revisit the definition of a "single and complete project".

After consulting with Headquarters U.S. Army Corps of Engineers, we have the following responses to your requests in regard to our Programmatic General Permits (PGPs):

a) Swamp mats for temporary construction access in wetlands will not be considered a discharge of fill material. Also, any impacts caused by the mats will not be included as secondary impacts for the purpose of determining the applicable category for PGPs. However, the use of swamp mats may be required as a special condition to a PGP authorization to minimize aquatic impacts, as stated below:

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.

b) The definition of single and complete projects has been clarified as stated below:

Single and Complete projects - The general permits 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

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multiple, separate, and distinct waterway or wetland crossings where each crossing may be reviewed for PGP Category I eligibility. If any crossing requires Category II review, then the entire linear project shall be reviewed as one project under Category II. The general permit shall not be used for any activity that is part of an overall project for which an individual permit is required.

We hope that this addresses your concerns. If you have any questions with these determinations please contact Ms. Christine Godfrey at (978)318-8338 or (800) 362-4367.

Sincerely,

William F. Lawless, P.E.  
Chief, Regulatory Branch  
Construction/Operations Division



November 30, 1999

Mr. William Lawless, P.E.  
Chief, Regulatory Branch  
Construction - Operations Division  
U.S. Army Corps of Engineer  
New England District  
696 Virginia Road  
Concord, MA 01742-2751

Dear Mr. Lawless:

New England Electric System (NEES) respectfully requests a written determination as to whether the Corps of Engineers (Corps) interprets the installation of timber construction mats (swamp mats), in wetlands for construction access, a discharge of fill material. NEES is also requesting the Corps to re-visit the definition of a "single and complete project". These requests are being made because of their impacts when filings for Section 404 authorizations, under the Programmatic General Permits program (PGP), in Massachusetts, New Hampshire, Vermont and Rhode Island.

NEES owns and operates overhead and underground electric power transmission lines (power lines) in the states of Massachusetts, New Hampshire, Rhode Island and Vermont. For the most part the power lines occupy cross county rights-of-ways (ROW). Access to support structures is generally from a public way over existing roads along the ROW. Most of the ROW's have been established for 50 or more years, many wetlands are located within the ROW. Access roads along the ROW range from well constructed gravel roads to access over existing terrain. In most cases access through wetlands for construction is on good gravel roads or on temporary swamp mat roads. Because of changing environmental regulations, in the New England Region, NEES has been unable to obtain approval to construct new gravel access roads, for the construction of new power lines, since the mid 1980's. As a result, access for the construction of new power lines and the maintenance, repair and reconstruction of existing power lines through wetlands has been done with the use of swamp mats.

NEES understands that the use of Programmatic General Permits (PGP) was developed to reduce paper work and expedite the issuance of Section 404 authorizations. Generally speaking this is true. However, in the case of linear projects, the process has become longer. NEES believes the two major reasons for this are:

- (1) The Corps determination that the installation of swamp mats is a discharge of fill material and not the installation of structures.
- (2) The definition of a "single and complete project" presently being used.

With regards to the first reason, NEES believes the decision that swamp mats should be considered a discharge of fill material is tied to a comment in the preamble to the Tulloch Rule, published in the Federal Register dated August 25, 1993. On page 45023 of that publication the

Corps response to the comment “ **that the installation of corduroy roads should be excluded from Section 404 regulation**”. The Corps stated that it was not a discharge of dredged material, but it could be considered the discharge of fill material. Based on that statement, applicants filing for Section 404 authorization in the New England District are required to include the area of the swamp mats as filled wetlands.

The issue of swamp mats came up again in the July 1, 1998 Federal Register, when the Corps published the “Proposal To Issue and Modify Nationwide Permits; Notice”. One of the proposed Nationwide Permit (NWP) to be modifications was NWP No.12. The proposed modification would authorize the discharges of fill associated access roads and substation. On page 36059, the Corps stated that when calculating the area of lost wetlands, the applicant should not include the area of the swamp mats.

Corduroy road are constructed by placing cut trees and slash material along the access route for the purpose of supporting construction equipment. Corduroy roads are left in place for future access.

Swamp mats are used to create temporary construction access roads. The installation consists of placing timber mats along the access route to support construction equipment. Once the work has been completed the mats are removed. A swamp mat is constructed by lashing 4 - 1' x 1' x (12' to 20') timbers together. NEES generally uses 4' x 16' mats when working in wetlands. Once the work has been completed the mats are removed.

NEES believes that swamps mats are structures and not fill. A review of the definitions, fill material and discharge of fill material supports this interpretation. Structures are regulated under Section 10 and not Section 404.

**33 CFR 323.2(e) defines fill material as:** The term fill material means any material used for the primary purpose of replacing an aquatic area with dry land or changing the bottom elevation of any waterbody. The term does not include any pollutant discharged into the water primarily to dispose of waste, as that activity is regulated under section 402 of the Clean Water Act.

**33 CFR 323.2(f) defines discharge of fill material as:** The term discharge of fill material means the addition of fill material into waters of the United States. The term generally includes, without limitation, the following activities: Placement of fill that is necessary for the construction of any structure in a water of the United States; the building of any structure or impoundment requiring rock, sand, dirt, or other material for its construction; site-development fills for recreational, industrial, commercial, residential, and other uses; causeways or road fills; dams and dikes; artificial islands; property protection and/or reclamation devices such as riprap, groins, seawalls, breakwaters, and revetments; beach nourishment; levees; fill for structures such as sewage treatment

facilities, intakes and outfall pipes associated with power plants and subaqueous utility lines; and artificial reefs. The term does not include plowing, cultivating, seeding and harvesting for the production of food, fiber, and forest products.

Unlike the placement of a corduroy road, swamp mats do not replace an aquatic area with dry land nor do they change the bottom elevation. They may displace a small volume of water in those locations where there is standing water. However, once the work is completed and the mats have been removed the displaced water will return.

The second problem is the way the Corps defines "single and complete projects", under the PGP program. To calculate total impacts for a project, the applicant is required to add together the area lost for each wetlands on the entire project. In the case of linear projects, when you add all of the small fills of the various locations along a power line route, it does not take long to exceed the 5,000 sq. Ft., Category 1 and 2 thresholds. If the applicant includes the area of the swamp mats (4'x16' = 64 sq. Ft./Mat) into the total, almost all projects will require an individual permit.

Under the Massachusetts PGP, Part E. Programmatic General Permit Conditions: General Requirements: 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."** Generally speaking, this is a good assessment of the accumulated impacts to a water of the United States resulting from a proposed project. However, when considering a linear project such as a electric power line, sewer line or gas line which may extend into many communities, and pass through many different waters of the United States. The accumulated total impact being reviewed is to many waters of the United States and not each single water of the United States".

The Corps recognized that linear projects, utility lines tend to extend through a number of different waters of the U.S., would have a problem if the definition for linear projects was not modified. When the Corps developed the Nation Wide Permit Program, 33 CFR 330, relief was provided for linear projects with the definition of a "single and complete project for linear project".

## **"33 CFR 330 - NATIONWIDE PERMIT PROGRAM**

### **SECTION 330.2 Definitions**

**(I) Single and complete project** means the total project proposed or accomplished by one owner/developer or partnership or other association of owners/developers. For example, if construction of a residential development affects several different areas of a headwaters or isolated waters, the cumulative total of all filled areas should be the basis

**for deciding whether or not the project will be covered by an NWP. For linear projects, the "single and complete project" (i.e. single and complete crossing) will apply to each crossing of a separate water of the United States (i.e. single water body) at that location; except that for linear projects crossing a single water body several times at separate and distant, each crossing is considered a single and complete project. However, individual channels in a braided stream or river, or individual arms of a large, irregularly-shaped wetland or lake, etc., are not separate water bodies. "**

When an applicant proposes a project in an area that is subject to jurisdictions under Section 404 of the Clean Water Act, a review of the proposed project is made to determine whether there will be a discharge of dredged or fill material. If the proposed work does result in the discharge of dredged or fill material, the size of the area that will be impacted will determine the level of review required by the Corps. Under the existing PGP, authorizations to discharge dredged or fill material into Waters of the United States falls into one of three categories:

Category 1 - single and complete projects that have discharges that impact up to 5,000 sq. ft. are authorized if the applicant has received a valid Order of Conditions (OOC) issued under the Massachusetts Wetlands Protection Act (ACT) and the project includes 1 for 1 wetland replacement.

Category 2 - single and complete projects that have discharges that impact an area from 5,000 sq. ft. to 1 acre must submit notice to the Corps of the proposed discharge. The notice then goes through a screening process (inter-agencies review) which determines whether the project needs more review or the work can go forward as is. The applicant is also required to obtain a 401 Water Quality certification for the proposed project.

Category 3 - single and complete projects that have discharges that will impact 1 acre or more must submit an application for an individual permit.

Under the existing PGPs, many of the linear projects are forced into a Category 3 (Individual Permit Application) because the power line passes through many different waters of the United States with many small discharges. When you add together all of the small fills, the total area is over 5,000 sq. ft. and in many cases over 1 acre. This results in added time and work for both the Corps and the applicant. NEES believes that if the Corps were to adopt the definition sited in 33 CFR 330.2, there would be adequate environmental review, and a considerable time savings for the Corps and the applicant. With this in mind NEES is requesting the Corps to adopt the definition as stated in 33 CFR 330.2.

If you have any questions on this request, I can be reached by telephone at (508)412-7753.

Very truly yours  
  
David L. Therrien  
Principal Environmental Engineer  
cc Ms. Christine Godfrey

## Gaudet, Jody A NAE

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**From:** Adams, Karen K NAE  
**Sent:** Thursday, December 30, 1999 3:44 PM  
**To:** Gaudet, Jody A NAE  
**Subject:** FW: MA PGP Modification resolution

-----Original Message-----

**From:** ED REINER [mailto:REINER.ED@epamail.epa.gov]  
**Sent:** Wednesday, December 29, 1999 1:46 PM  
**To:** Karen.K.Adams@usace.army.mil  
**Cc:** ALAFAT.BETH@epamail.epa.gov; MADISON.STAFFORD@epamail.epa.gov;  
MANFREDONIA.RONALD@epamail.epa.gov; SCHWEISBERG.MATT@epamail.epa.gov;  
THOMPSON.DOUG@epamail.epa.gov; WEBSTER.DAVID@epamail.epa.gov;  
Pat.Huckery@state.ma.us  
**Subject:** MA PGP Modification resolution

TO: Karen Adams: Corps of Engineers

After much thought, EPA has decided, based on the Massachusetts Natural Heritage programs input, not to pursue MA PGP modification to include special provision for the protection of Federal, non-state wetlands that are designated on the Natural Heritage and Endangered Species program State-listed Endangered, Threatened, or Special Concern species habitat maps.

It was decided that we would continue to request Discretionary Authority permit review on those few cases each year that warrant federal review. EPA expects that this issue can be revisited two years from now or upon PGP renewal if staffing and funding improves at the Massachusetts Natural Heritage Program. Pat Huckery of the program decided, it may be too much work for her to review all small fills in the isolated wetlands that do not meet the state definition for land subject to flooding (Federal non-state wetlands).

I have one more suggestion, however to provide for the vernal pool portion of the PGP modification.

Use the term "confined basin depressions", rather than "contained basin depressions" in the definition of vernal pools. Pat Huckery informed me that this is from the WPA definition (310 CMR 10.04). The term "contained basin depressions" was published as an error in Leo Kenney's Wicked Big Puddles.

I believe our final language may look something like this:

Special Inland Waters and Wetlands:

vernal pools - confined basin depressions with water for two or more continuous months in the spring and/or summer, and for which evidence of one of the following obligate vernal pool species: wood frogs (*Rana sylvatica*), mole salamanders (*Ambystoma* spp.), and/or fairy shrimp (*Eubranchipus* spp.), or two of the following facultative species: caddisfly (*Trichoptera*) larvae casings, fingernail clams (*Sphaeriidae*), or amphibious snails (*Basammatophora*) as well as 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).



# United States Department of the Interior



FISH AND WILDLIFE SERVICE  
New England Field Office  
22 Bridge Street, Unit #1  
Concord, New Hampshire 03301-4986

REF: 199001470

December 23, 1999

Mr. William F. Lawless, Chief  
Regulatory Division  
U.S. Army Corps of Engineers  
696 Virginia Road  
Concord, MA 01742-2751

Dear Mr. Lawless:

This is in response to your June 8, 1999 Public Notice proposing to reissue the Massachusetts Programmatic General Permit (PGP) for a second five-year period and is a supplement to our July 13, 1999 letter.

During the course of this review, we have identified several technical issues with the draft permit which we have by-and-large communicated directly to your staff and have also included in this comment letter. However, your cumulative effect assessment raises the larger question of whether or not the existing permit meets the statutory requirements in §404(e) of the Clean Water Act, 33 U.S.C. 1344(e); i.e., does the loss of approximately 115 acres of wetlands and other waters during the five-year review period for Category II projects comply with the minimal cumulative adverse effects standard established by statute?

In view of the fact that the answer to this question no doubt requires analysis of an array of variables (e.g., functions and values of the affected wetlands, geographic location, project size, etc) and in view of the fact that we must deal with the same question when other PGPs come up for renewal (e.g., Maine), I recommend that the Mid Level Managers (or a subcommittee of the MLMs ) attempt to develop a protocol for determining the cumulative minimal effect breakpoint before the Massachusetts PGP is renewed.

## Specific Section-by-Section Comments

### Application for Dredging Projects

Under the heading of additional information required on page 3, we suggest including items (f) delineation of submerged aquatic vegetation and (j) alternatives analysis from the same subheading on pages 2 and 3 for Category II application procedures. This change would make these two subsections pertaining to additional information identical with respect to issues (f) and (j).

## Federal Screening Procedures

We are concerned with the second sentence in this section which allows the Corps and federal resource agencies the option of agreeing not to coordinate on certain unspecified activities at the screening meetings. If this provision is retained in the PGP, we request that the approval authority to cease or resume coordination on these unspecified activities rest with the Field Supervisor. As our comment indicates, this process should work in both directions; otherwise, a lack of coordination on certain activities could exist for several years, or until the next PGP renewal process.

## General Permit Conditions

### 7. National Lands

We suggest inserting the words “area administered as part of” in front of National Wildlife Refuge on line 2. This would make the section internally consistent with the wording for the National Park Service and would make it clear that satellite areas administered by a Federal Land Management agency are included in this permit condition.

### 18. Waterway Crossings

We suggest changing the title of this heading to Instream Construction and Waterway Crossings. In the past, it has not always been clear that this condition was intended to cover instream work even if the applicant only worked from one side of a stream. The words instream construction should help clarify that this condition is intended to cover all instream activities that result in discharges of fill, not just complete stream crossing activities.

We recommend that the time-of-year restriction in 18(d) be changed to July 1-September 30. This would make the condition consistent with the Connecticut and Rhode Island PGP’s.

## Definition of Categories

### A. Inland Waters

#### (a) Fill

Under Category I, we recommend that you modify the time-of-year restriction under the first asterisk to July 1-September 30.

Under the second asterisk in Category I, we recommend adding the phrase “and discharges associated with instream sediment removal” at the end of the existing exclusion. This new exclusion is intended to move activities associated with flood mitigation, channel realignment, sediment removal, and gravel mining into Category II for screening.

Under Category II and the Individual Permit Category, we suggest inserting the words “excavation discharges excluding incidental fallback” before the phrase “and discharges associated with mechanized land clearing. The revisions to the Tulloch Rule as required by the National Mining Association Decision were narrow in scope and focused only on incidental fallback at the location of the excavation activity, not on excavation discharges as a whole.

#### (b) Bank Stabilization

The upper length threshold for bank stabilization under Category I is currently set at 500 feet in length. In prior comments, we objected to this criterion because it would likely allow for impacts that exceed the minimal effects threshold on an individual basis. Additionally, in the years since we first raised this objection, significant advancements have been made in environmentally friendly river restoration techniques. Consequently, the need for riprap and other traditional engineering solutions involving stone and concrete are limited to special situations and should not be viewed as a preferred or first choice option. In order to minimize the adverse effects of riprap and the installation process, we recommend that the upper length threshold for Category I bank stabilization be limited to 200 feet. Category II should be changed to bank stabilization greater than 200 feet.

As an alternative to restricting the length of the work area, a restriction on the volume of fill could be instituted to help minimize the use and effects of riprap. If the 500 foot length is retained, we recommend the fill limit be reduced to not more than 0.25 c.y. per running foot of channel.

#### B. Tidal or Navigable Waters

##### (a) Fill

Under the second criterion in Category II and the Individual Permit Category, we assume an editorial error exists and that the sentence was meant to read as follows: Temporary fill or discharges associated with mechanized land clearing up to 1 acre in special aquatic sites.

If this interpretation is generally correct, we recommend that the language we have suggested pertaining to excavation discharges in inland waters be included here also.

The first and third criteria under Category II appear to be inconsistent with each other. It would appear that the first sentence in the third criterion was intended to refer to tidal wetlands and not all special aquatic sites.

##### (c) Dredging

Several changes have been proposed for dredging and disposal activities under Category II and the Individual Permit Category which have the effect of creating internal inconsistencies in the PGP and allowing for individual activities that exceed the minimal effects threshold to be authorized by general permit. Under the existing PGP, open water disposal is not an option under Category II.

Consequently, this has the effect of placing an upper limit on the volume of maintenance dredging material that could be authorized under Category II. The draft permit would authorize open water disposal under Category II and no upper limit on the volume of maintenance dredge material is proposed. In order to correct these unintended consequences, we recommend that an upper limit of 25,000 cubic yards of maintenance dredging material be included in Category II for projects that propose open water disposal.

The draft permit also proposes to increase the volume of new dredging from 10,000 c.y. to 25,000 c.y. This combined with the new authority for open water disposal will increase the frequency of new dredging under Category II and expand the direct footprint and secondary effects of these activities quite significantly. In order to correct these unintended consequences and maintain a general level of consistency within the PGP, we recommend language similar to the first criterion under fill activities in fresh and tidal waters be included as follows: Up to 1 acre of waterway dredging and/or secondary waterway impacts (e.g., areas subject to erosion, sedimentation, increased vessel traffic and associated effects). Includes temporary and permanent waterway dredging.

If these proposed changes are deemed unacceptable, then we recommend that open water disposal be retained exclusively under the Individual Permit Category, and the 10,000 c.y. limit for new dredging criteria in Category II of the original PGP be retained.

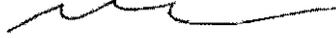
#### (e) Pile-Supported Structures and Floats

In prior correspondence on the PGP and other regional permits, we have recommended that the pier criteria in Category I be limited to 50 feet in length as measured from mean high water, and the size of floats be limited to 150 square feet. These criteria were recommended so that the Service and others would have the opportunity to review projects that cause unreasonable exclusionary occupation of navigable and other waters of the U.S. We again recommend that these more restrictive criteria be included in Category I. In addition, the cumulative effect assessment needs to include an evaluation of the exclusionary occupation impact on navigable waters.

We thank you and your staff for holding the comment period open so that our review could include the cumulative effect assessment. Without the assessment, our review of the PGP would have been more difficult and likely incomplete. As stated previously, we request the opportunity to discuss these comments and recommendations with you prior to your final decisions on the structural and operational aspects of the Massachusetts PGP.

Questions concerning these comments should be directed to Mr. Vern Lang of this office at 603-225-1411.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Michael J. Bartlett". The signature is fluid and cursive, with a long horizontal stroke at the end.

Michael J. Bartlett  
Supervisor  
New England Field Office

CC: Reading File  
Laury Zicari, FWS  
C. Godfrey, NED, Reg.  
D. Webster, EPA  
A. Williams, EPA  
R. Manfredonia, EPA  
R. Janson, EPA  
P. Colosi, NMFS  
L. Brunoog, MADEP, Wetlands and Waterways  
J. Mead, MA CZM  
H. Roddis, MAS  
S. Zelinski, MACC  
ES: VLang:jd:12-23-99:603-225-1411



**US Army Corps  
of Engineers**  
New England District

**FACSIMILE TRANSMITTAL HEADER SHEET**

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DDISCA

COMMAND/ OFFICE	NAME/ OFFICE SYMBOL	OFFICE TELEPHONE NO. (AUTOVON/Comm.).	FAX NO. (AUTOVON/Comm.).
FROM: Jody [unclear]	CRANE [unclear]	(418) [unclear]	(1-781) [unclear]
TO: [unclear]	NAD		(418) 421-6000

CLASSIFICATION	PRECEDENCE	NO. PAGES (Including this Header)	DATE-TIME	MONTH	YEAR	RELEASER'S SIGNATURE
		12	12/2/94 10:30am			Jody [unclear]

REMARKS: [unclear handwritten notes]

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CENAD-ET-O

MEMORANDUM FOR Commander, New England District

SUBJECT: Revocation of Nationwide Permits (NWPs) in Massachusetts

1. Reference your memorandum dated October 14, 1999, subject: Revocation of Nationwide Permits (NWPs) in Massachusetts).
2. Based on the authority given to me at Title 33 CFR Part 330.4 (e) and .5, I determined that it would be in the public interest to revoke the NWPs, based upon and described in the attached Statement of Findings (SOF), for the State of Massachusetts, effective November 1, 1999. The attached SOF details the revocation of the NWPs.
3. The Nationwide Permits are being revoked in Massachusetts to continue to reduce duplication and potential confusion for the regulated public, because the State of Massachusetts Programmatic General Permit, effective on/about December 15, 1999, will be available to authorize these same activities. The MA PGP has a five-year proven record of streamlining permitting and protecting the aquatic environment in Massachusetts.
4. Please provide my office with a copy of your Public Notice, as stated in 33 CFR Part 330.5(c)(2), announcing the effective date of this revocation action.
5. Should you have any questions regarding this action, please have your staff call my Regulatory Program Manager, Ms. Carol Coch, at 718-491-8728.

Atch

M. STEPHEN RHOADES  
BRIG GEN, USA  
Commanding

CENAD-ET-O (1145)

## MEMORANDUM FOR RECORD

SUBJECT: Authorization to Proceed with the Revocation of Nationwide Permits in the State of Massachusetts – Statement of Findings

1. PROPOSAL: On August 17, 1999, the New England District, Corps of Engineers issued a public notice soliciting comments on the revocation of the Nationwide Permits (NWP) in the State of Massachusetts.

The proposal to revoke the NWP and to continue to replace them with a Programmatic General Permit (PGP) follows similar actions taken in Massachusetts and the other New England states in the past. These PGPs have streamlined the Corps regulatory program and have more closely aligned Corps review with the state regulatory programs.

2. AUTHORITY: Discretionary Authority is defined at 33 CFR 330.4(e). **The authority and procedures for the Division Engineer to assert his discretionary authority is found at 33 CFR 330.5 (c).** The Division Engineer may use his discretionary authority to modify, suspend, or revoke Nationwide Permits for any specific geographic area, including on a statewide basis. The Corps must issue a public notice stating its concerns regarding the environment, give opportunity for comment and opportunity to request a public hearing, consider fully the view 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.

*On June 8, 1999 and August 17, 1999, public notices soliciting comments on the reissuance of the MAPGP and the revocation of the NWP were issued. All comments were fully considered. Upon approval of this action a public notice will be issued to notify the public. The notice will state that the reissued MAPGP contains a grandfathering period for projects issued under the previous MAPGP.*

3. COMMENTS RECEIVED: Several comment letters in support of reissuing the PGP were received in response to the public notice for the PGP. Commenters included the Federal resource agencies, MA Audubon Society, Town of Pepperell, and MA Natural Heritage and Endangered Species Program. No comment letters were received in response to the public notice to revoke the NWP in Massachusetts.

4. EVALUATION: This revocation of the NWP in Massachusetts and continued replacement with the PGP is based on Corps experience throughout New

England where the PGPs have resulted in a **more effective, efficient Federal Regulatory Program** based on good State-Federal participation. The State of Massachusetts has a state wetlands program of which the Corps took advantage, where possible, in creating this PGP.

The goals of this effort are multiple:

**(1) Provide simplification and streamlining in the regulatory process.**

Projects with minimal individual and cumulative effects on the aquatic environment will be approved administratively under the PGP. Projects with the potential for more than minimal effects will be subjected to individual permit review. Project eligibility will fall into two categories defined using the regional criteria in non-reporting projects (Category I) and reporting projects that will be screened (Category II). Non-reporting Category I projects will be able to proceed upon approval from the Massachusetts Department of Environmental Protection (MA DEP) without notification to the Corps provided all terms and conditions of the PGP are met.

Category II activities require reporting to the Corps and will be reviewed by the Corps, MA DEP, and the Federal resource agencies (U.S. Fish and Wildlife Service, U.S. Environmental Protection Agency, National Marine Fisheries Service). Through the interagency screening, the Corps will determine if individual and cumulative adverse environmental impacts are minimal and whether the project may proceed under the PGP.

Projects that do not meet the terms and conditions of the PGP will require an individual permit. The individual permit review procedures are not altered by the PGP. Federal exemptions (which are not necessarily the same as the State's exemptions) would also not be altered by the PGP. In addition, PGP authorizations will not be valid until all other required Federal, State, and local permits and/or certifications are obtained.

**(2) Continue increased environmental sensitivity.**

**The Corps will have the ability to quickly screen many more projects** with the Federal resource agencies in order to decide which impacts are appropriately reviewed under individual permit procedures. Additionally, the decision of ineligibility under the PGP will be much simpler and require less staff time than the discretionary authority procedures. Although the Corps reserves the right to take discretionary authority on any project where it determines it is necessary and in the public interest to do so.

**The revocation of the NWP's will continue to allow maximum use of the PGP and result in a greatly simplified and expedited regulatory program in Massachusetts. Revocation of the NWPs will also reduce**

**confusion among the general public in Massachusetts regarding permitting processes.**

5. *SUMMARY: The Corps of Engineers should revoke the NWP's in Massachusetts for the following reasons:*

- *MAPGP covers all work authorized by the NWP's plus significantly more*
- *Increases efficiency saves money and time for the organization and the public*
- *Simplifies the permitting program for the public (based on 3 simple impact categories tailored to the state's program)*
- *Streamlines permit process coordinating Federal and state review and response (one-stop shopping)*
- *Eliminates duplication of work between the Corps and MADEP*
- *Enhances working relationships between the Corps and Federal and state agencies*
- *Increases environmental protection (screening with the state provides an opportunity for greater awareness, than was possible with the NWP's, of projects with the potential for more than minimal impacts)*
- *MAPGP has a highly successful, proven track-record*

*Also, HQUSACE encourages the use of PGP's and revocation of the NWP's to have a streamlined general permit program (see HQUSACE guidance memo attached). HQUSACE has endorsed the revocation in the past, and more recently in the attached guidance memo.*

6. *DECISION: Pursuant to the authority at 33 CFR 330.4(e) and .5, I hereby approve this proposal to revoke the NWP's in Massachusetts.*

7. *REVIEW AND IMPLEMENTATION: The Division Engineer retains the right to review the effect of these actions and to revise or rescind this decision if the public interest warrants. The proposal decided herein will be effective as of the date signed below for a period of five years.*

---

M. STEPHEN RHOADES  
Brig Gen, USA  
Commanding

Date

15 April 1999

CECW-OR

MEMORANDUM FOR COMMANDER, MAJOR SUBORDINATE COMMANDS AND  
DISTRICT COMMANDS

SUBJECT: Supplemental Decision Documents Addressing Regional Conditions for the 1999  
Nationwide Permits

1. In the 1 July 1998, Federal Register notice, we stated that regional conditions will be necessary to ensure that the new and modified Nationwide Permits (NWP) will authorize only those activities with minimal adverse effects on the aquatic environment, individually or cumulatively.
2. Whenever Corps regional conditions are added to an NWP, the Division Engineer must justify the need for those regional conditions in a decision document that supplements the national decision document for that NWP (see 33 CFR Part 330.5(c)(iii)). To promote consistency for these supplemental decision documents, we have developed a template that must be followed by all Corps Divisions, to ensure that the supplemental decision document adequately addresses all of the applicable laws and regulations. We are also enclosing a copy of our decision document for NWP 7 and a copy of the index of Nationwide Permits and conditions for information purposes.
3. Because of the scrutiny that the new and modified NWP are subject to, as well as pending and future lawsuits that involve the NWP program, we must ensure that all of the decision documents for the NWP thoroughly address compliance with Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act, as well as other applicable laws.
4. The final NWP national decision documents will be issued at the same time the new and modified NWP are published in May 1999. We will provide copies of these decision documents to each division and district office. Each division office must finalize the supplemental decision documents for Corps regional conditions prior to the publication of the next Federal Register notice in July 1999. District offices should be prepared to assist their division commanders in the preparation of these documents. A copy of each supplemental decision document must be sent to CECW-OR after it is finalized. In the administrative record for the new and modified NWP, we will include all of the supplemental decision documents with the national decision documents.

CECW-OR

SUBJECT: Supplemental Decision Documents Addressing Regional Conditions for the 1999 Nationwide Permits

5. Districts that intend to issue regional general permits and use them in lieu of the new and modified NWP's must follow a similar process. The information requirements for the national NWP decision documents are the same as the information requirements for the decision documents necessary to issue a regional general permit. In other words, a similar amount of effort is necessary to write the decision documents for these NWP's and regional general permits.

6. If a district has proposed regional conditions that apply to NWP's other than the new and modified NWP's in the 1 July 1998, Federal Register notice, the regional conditions for those NWP's must be addressed in a separate decision document. This decision document must contain the same information as the attached template. There should be a single document for each regional general permit.

7. I appreciate that the writing of these decision documents will be a long, resource-intensive effort. However, this effort is necessary to ensure that the NWP's are in compliance with applicable laws and regulations. Although these documents are voluminous, many of the issues will be the same for a number of the NWP's and therefore much of the documents would consist of standard language. You only need to modify that text which addresses local issues.

8. Several questions regarding the test for what regional conditions should be added have been asked. The 1 July 1998 Federal Register notice gives several examples of conditions that would be appropriate. The bottom line test is that regional conditions need to be added to the extent that they are required to ensure that no more than minimal adverse effects on the aquatic environment will occur. Most, if not all, districts will realize additional workload from the regional conditions. MSCs will evaluate proposed conditions to ensure that workload is not unreasonably increased by conditions that may not be necessary to meet the minimal effects threshold. There is not additional funding available, so districts must prioritize their efforts to accommodate the added workload.

9. Should you have any questions, please contact Mr. David Olson or Mr. Sam Collinson, at (202) 761-0199.

Encls

/signed/  
JOHN F. STUDD  
Chief, Regulatory Branch  
Operations Division  
Directorate of Civil Works

DISTRIBUTION:  
(SEE PG 3)

## Gaudet, Jody A NAE

---

**From:** Adams, Karen K NAE  
**Sent:** Wednesday, December 22, 1999 8:42 AM  
**To:** Gaudet, Jody A NAE  
**Subject:** FW: MA PGP language concern for vernal pools and endangered species habitat

-----Original Message-----

From: Ed Reiner [mailto:REINER.ED@epamail.epa.gov]  
Sent: Tuesday, December 21, 1999 3:14 PM  
To: Jody.A.Gaudet@NAE01.usace.army.mil;  
Karen.K.Adams@nae02.usace.army.mil; Matt.Burne@state.ma.us  
Cc: MADISON.STAFFORD@epamail.epa.gov; SCHWEISBERG.MATT@epamail.epa.gov;  
THOMPSON.DOUG@epamail.epa.gov; WEBSTER.DAVID@epamail.epa.gov  
Subject: MA PGP language concern for vernal pools and endangered species habitat

I spoke with Matt Burn from the MA Natural Heritage Program to understand some of the concerns about the PGP language you were proposing to revise.

Please understand the following issues are very important to EPA and the MA Natural Heritage Program who commented on the PGP re-issuance to the Corps. If we cannot come to a mutual agreement by e-mail, I suggest a meeting be set up to include our respective supervisors as well.

1. We need to retain the entire list of organisms for the identification of the vernal pools. To be more specific, and consistent with the Natural Heritage Programs official guidelines for the certification of vernal pools I suggest the following:

... for which one of the following obligate vernal pool organisms; wood frogs (*Rana sylvatica*), mole salamanders (*Ambystoma* spp.), and/or fairy shrimp (*Eubranchipus* spp.) has been documented:...or two of the following facultative species: caddisfly (Trichoptera) larvae casings, fingernail clams (Sphaeriidae), or amphibious snails (Basammatophora) has been documented as well as proof that the pool does not contain an established reproducing fish population (for example it goes dry).

If you want you can state: evidence of vernal pools in accordance with Massachusetts Natural Heritage Programs "Guidelines for Certification of Vernal Pools"

The reason why we need to include the facultative species is to provide a mechanism where a consultant, citizen, or agency representative can identify a vernal pool in the fall when the pool is dry or in the winter prior to flooding. Obligate species can not be found all times of the year. This is why the official guidelines for certification allows two or more facultative species and proof that the pool does not contain an established reproducing fish population to be used for certification purposes.

2. Regarding the adult fish language, if you change it to the above language or the specific language in the guidelines for certification, this would be better then just simply saying "which are free of adult fish."

3. Regarding our concern to include the non-depressional state listed mapped endangered species habitat as requiring screening level review, I suggest using the language:

by stating "and/or" we would be including wetlands that are designated on the NHP maps. The reason EPA believes we need to do this is two fold.

1. If someone wanted to fill less than 5,000 square feet of a federal non-state wetland that did not qualify as a vernal pool (depressional wetland) but was on the NHP maps as containing endangered species habitat, the state endangered species program would not know about the fill since no wetland protection act permit is required.

This fill, however, in EPA's and MA NHP opinions would likely cause more than minimal impact to the aquatic ecosystem. Important wetlands serving as habitat for these species should not be allowed to be filled, without at least the screening level review so that we can determine if in fact the alteration does or does not qualify for a PGP approval. We would coordinate with the MA NHP to determine this in the screening review.

2. Sometimes the existing state system, if it is a regulated state wetland containing mapped endangered species habitat does not work: ie. the conservation commission or applicant does not know of or look at the maps. They don't send a NOI to the NHP. They issue a negative determination without requiring a NOI so no NOI is sent to the NHP. For all of these reasons and more that I do not list, the Corps PGP screening of impacts if it is in a mapped area, would avoid losses of these important wetlands going on without proper knowledge and consent of the MA NHP and us feds.

If you need further information or clarification of our request, please call me at 617-918-1692. Matt Schewisberg may also be able to assist you. I also asked Matt Burn from the MA NHP to e-mail you with some suggested language to coincide with the state guidelines for certification of vernal pools.

## Gaudet, Jody A NAE

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**From:** Adams, Karen K NAE  
**Sent:** Wednesday, December 22, 1999 8:43 AM  
**To:** Gaudet, Jody A NAE  
**Subject:** FW: Changes to proposed PGP language

-----Original Message-----

From: Burne-FWE, Matt [mailto:Matt.Burne@state.ma.us]  
Sent: Tuesday, December 21, 1999 4:36 PM  
To: Karen.K.Adams@usace.army.mil  
Cc: REINER.ED@epamail.epa.gov; schweisberg.matt@epamail.epa.gov; thompson.doug@epamail.epa.gov  
Subject: Changes to proposed PGP language

Dear Ms. Kirk-Adams,

The Natural Heritage & Endangered Species Program (NHESP) has learned of recent changes, based on a meeting with consultants, in the language proposed for the statewide Programmatic General Permit for Massachusetts. These changes relate to the proposed language for Special Inland Waters and Wetlands, specifically regarding the protection of state-listed rare species habitats and vernal pools. We would like to offer you comments on the changes to the proposed language. As currently written, the opportunity to enhance protection of rare species habitat and vernal pools under the Army Corps of Engineers wetlands permits is compromised.

The definition of Special Inland Waters and Wetlands now reads "depressional waters and wetlands that are designated on the Natural Heritage and Endangered Species Program...habitat maps and vernal pools." We are concerned that this will function to undermine protection for rare species habitat and vernal pools. Special Inland Waters and Wetlands are restricted to depressional waters and wetlands as revised. Non-depressional waters or wetlands therefore may not be considered Special Inland Waters and Wetlands. Many rare species utilize wetlands and waters that are not depressional in character, and it does not seem appropriate to limit the classification to only depressional waters and wetlands. In addition, individual Corps screening for projects occurring in NHESP mapped habitats would provide an important protection against projects that have not undergone appropriate state review, or that occur within federal/non-state wetlands.

The language as rewritten is likely to be interpreted to mean that only vernal pools mapped on the NHESP's Estimated Habitat maps (Certified Vernal Pools, in other words) can be considered Special Inland Waters and Wetlands. It is my understanding that the Corps would like to exclude Certified Vernal Pools, as they are already protected as Outstanding Resource Waters, but we believe that the language, as currently written, is likely to be misinterpreted to mean vernal pools that are mapped by NHESP. We strongly suggest that vernal pools be more explicitly separated from the NHESP habitat map in the definition of Special Inland Waters and Wetlands to avoid confusion over the intent of the Corps.

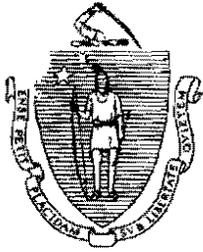
We are also concerned with the manner in which vernal pools are defined in the second sentence. The official definition in the Wetlands Protection Act (310 CMR 10.04) is

"...confined basin depressions which, at least in most years, hold water for a minimum of two continuous months during the spring and/or summer, and which are free of adult fish populations\_ (emphasis added)... These areas are essential breeding habitat, and provide other extremely important wildlife habitat functions during non-breeding season as well, for a variety of amphibian species such as wood frog (*Rana sylvatica*) and the spotted salamander (*Ambystoma maculatum*), and are important habitat for other

Emphasis is added to "fish populations" because vernal pools in certain physiographic settings may occasionally contain fish. However, the establishment of reproducing populations is what must be considered in the certification criteria. The "Guidelines for the Certification of Vernal Pool Habitat" (Massachusetts Division of Fisheries and Wildlife) establish the official criteria for certification of vernal pools. In the "Guidelines," there are several means of documenting the biological function of a vernal pool, including, but not limited to the presence of wood frogs, mole salamanders, and fairy shrimp (obligate species). This is critical in that evidence of obligate species is available only between mid-March and early June in many pools. The Corps' original proposed language included the cases of caddisfly larvae, fingernail clams, or amphibious snail shells as acceptable indicators of vernal pool habitat. These organisms are excellent indicators of vernal pool habitat outside of the amphibian breeding season, especially when pools are dry in the summer, fall, and in some cases through the winter. The "Guidelines" also permit the certification of vernal pool habitat based on the presence of these animals. Additional proof that a pool does not contain an established, reproducing fish population is obvious when these indicators are collected from a dry pool. We strongly recommend the retention of these indicators in the definition of vernal pools as Special Inland Waters and Wetlands.

We hope that these suggestions help in the development of appropriate language for the statewide Programmatic General Permit for Massachusetts. Thank you for the opportunity to comment during this process.

Matthew R. Burne  
Vernal Pool Ecologist  
MA Natural Heritage & Endangered Species Program



COMMONWEALTH OF MASSACHUSETTS  
EXECUTIVE OFFICE OF ENVIRONMENTAL AFFAIRS  
DEPARTMENT OF ENVIRONMENTAL PROTECTION  
ONE WINTER STREET, BOSTON, MA 02108 617-292-5500

MARGARETO PAUL CELLUCCI  
Governor

JANE SWIFT  
Lieutenant Governor

BOB DURAND  
Secretary

LAUREN A. LISS  
Commissioner

December 13, 1999

William F. Lawless, P.E.  
Chief, Regulatory Branch  
Department of the Army  
New England District, Corps of Engineers  
696 Virginia Road  
Concord, MA 01742-2751

Re: Certification of Massachusetts Programmatic General Permit

Dear Mr. Lawless:

Pursuant to Section 401 of the federal Clean Water Act, the Department of Environmental Protection (DEP) hereby certifies renewal of the Massachusetts Programmatic General Permit (PGP) subject to the conditions listed below. These conditions have not changed from our previous certification, as they track our 401 Water Quality Certification Regulations at 314 CMR 9.00 and appropriate requirements of state law.

Since the Department may amend its 401 Water Quality Certification Regulations in the future, we reserve the right to amend our PGP certification to coincide with any future changes to these Regulations. If we do undertake regulatory revisions, we will work closely with your staff to ensure that our efforts are compatible.

We appreciate the time and effort your staff have invested in refining and improving the PGP, and thank them for their cooperation and coordination with DEP.

Certification Conditions:

A. 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 Department of Environmental Protection before work can proceed as authorized by this general permit for the following circumstances (pursuant to M.G.L. c.21 Sections 26-53 and regulations at 314 CMR 9.00):

This information is available in alternate format by calling our ADA Coordinator at (617) 574-6872.

DEP on the World Wide Web: <http://www.state.ma.us/dep>

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(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, Sections 81K-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, Section 40.* Any activity not subject to M.G.L. c.131, Section 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 the jurisdiction of M.G.L. c. 131, Section 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. 141, Section 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.

Activities identified at 314 CMR 9.03(1)-(6) do not require an individual 401 Water Quality Certification.

B. A Final Order of Conditions under the Wetlands Protection Act, M.G.L. c.131, s.40, must be obtained prior to work for activities subject to jurisdiction as defined in 310 CMR 10.02.

C. A license or permit under the Public Waterways Act, M.G.L. c.91, must be obtained prior to work for activities subject to jurisdiction as defined in 310 CMR 9.05.

Please contact me at (617) 292-5975 or Lois Bruinooge at (617) 292-5928 if we can be of any further assistance.

Sincerely,



Arleen O'Donnell  
Assistant Commissioner, BRP

cc: Lois Bruinooge, Director, Wetlands & Waterways Program

pgp.doc

## Gaudet, Jody A NAE

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**From:** Gaudet, Jody A NAE  
**Sent:** Thursday, October 28, 1999 8:36 AM  
**To:** Kelly, Grant NAE  
**Cc:** Godfrey, Christine A NAE; Adams, Karen K NAE  
**Subject:** RE: MA PGP t.o.y. Language

Grant,

I spoke with Vern regarding your proposed language for the Cat I TOY restriction. He said that they are willing to change the TOY from July 15-October 1 to July 1-October 1. This will be consistent with the RIPGP and CTPGP. They are not willing to prepare written responses to requests directly from applicants.

On somewhat of a side not, he said that they have found that MHD is not always prepared when they request changes to the TOY restriction. They should have information on the system such as warm/cold habitat, species nearby, recreational use.

-----Original Message-----

**From:** Kelly, Grant NAE  
**Sent:** Thursday, October 14, 1999 1:01 PM  
**To:** Gaudet, Jody A NAE  
**Subject:** MA PGP t.o.y. Language

<< File: pgp time of year language.doc >>

PROPOSED MODIFIED LANGUAGE FOR SPECIAL CONDITION # 17 OF  
MA PGP

**Item (d)** For projects which 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 having in-stream work that is not to be conducted during that time period are ineligible for Category I, unless the proponent has sought and received a written opinion from the USFWS that the time-of-year construction window may be extended, or is not applicable with regard to work at the specific project site. Projects not meeting these time-of-year restrictions are ineligible for Category I, and shall be screened pursuant to Category II, regardless of the waterway and wetland fill and/or impact area.



US Army Corps  
of Engineers  
New England District

**FACSIMILE TRANSMITTAL HEADER SHEET**

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

COMMAND/ OFFICE	NAME/ OFFICE SYMBOL	OFFICE TELEPHONE NO. (AUTOVON/Comm.)	FAX NO. (AUTOVON/Comm.)			
FROM: Jody Gaudet	CENAE-COR	(978) 318-8860	(978) 318-8303			
TO: Lois Bruinooge	MA DEP	(508) 767-2819	(508) 742-7621			
CLASSIFICATION	PRECEDENCE	NO. PAGES (Including this Header)	DATE-TIME	MONTH	YEAR	RELEASER'S SIGNATURE
		20				Jody Gaudet

REMARKS Condition 17 and MA Stormwater Policy in condition 20  
were added for CEM.

Space Below For Communications Center Use Only

DA FORM 3918-R,  
JUL 90

DA FORM 3918-R, AUG 72 IS  
OBSOLETE

USAPPC V2.10

Please call with any questions.

My goal is to have the PGP  
reissued by Friday Oct. 15.

Thanks!

Jody

CENAE-CO-R

October 19, 1999

MEMORANDUM FOR Carol Coch, Regulatory Program Manager

SUBJECT: Revocation of Nationwide Permits (NWP) in Massachusetts

1. Attached is a side-by-side comparison of the NWPs and the Massachusetts Programmatic General Permit (PGP), as you requested.
2. Please note that the PGP is more comprehensive than the NWPs and covers more types of projects than the NWPs, with greater efficiency of review and no sacrifice of environmental protection.
3. Also, attached is the revocation request for the NWPs in Massachusetts and supporting documentation for the Division Engineer's decision.
4. Please contact Ms. Christine Godfrey at (978) 318-8673 if you have any questions.

WILLIAM F. LAWLESS, P.E.  
Chief, Regulatory Branch  
Construction/Operations Division

Cc:  
Leonard Kotkiewicz - NAD

  
PM

  
PATISSIN

  
Bruce

### COMPARISON: NWP to MAPGP

Nationwide Permits	MAPGP	MAPGP Summary
1. Aids to Navigation	B. Tidal or Navigable Waters, (g) Miscellaneous, <b>Category I</b> .	<b>Category I</b> (non-reporting) <ul style="list-style-type: none"> <li>• Satisfy all MAPGP General Conditions</li> <li>• Receive all applicable local and state wetland permits</li> </ul>
2. Structures in Artificial Canals*	B. Tidal or Navigable Waters, (f) Pile-supported Structures and Floats, <b>Category I</b> or <b>Category II</b> depending on size of structure and presence or absence of special aquatic sites.	
3. Maintenance	A. Inland Waters and Wetlands, (c) Repair and Maintenance of Authorized Fills, <b>Category I</b> (currently serviceable, no expansion or change in use) or <b>Category II</b> (non-serviceable, expansion <1 acre, and/or change in use).  B. Tidal or Navigable Waters, (b) Repair and Maintenance Work, <b>Category I</b> (currently serviceable, no expansion or change in use) or <b>Category II</b> (non-serviceable, expansion <1 acre, and/or change in use).	<b>Category II</b> (reporting to Corps with screening) <ul style="list-style-type: none"> <li>• PGPs cover work formerly authorized by NWPs and a significant number of IPs. IP workload has decreased with the use of the PGPs.</li> <li>• &gt;95% of all work in MA is authorized under the PGP.</li> <li>• PGP applications are processed in 15-30 days.</li> </ul>
4. Fish and Wildlife Harvesting, Enhancement, and Attraction Devices and Activities*	B. Tidal or Navigable Waters, (g) Miscellaneous, <b>Category I</b> .	<ul style="list-style-type: none"> <li>• State and Federal screening insures adequate environmental protection.</li> </ul>
5. Scientific Measurement Devices* – discharge limited to 25 c.y	B. Tidal or Navigable Waters, (g) Miscellaneous, <b>Category I</b> (no limitation on volume of discharge). †	<ul style="list-style-type: none"> <li>• PGPs have general Categories that allow the Corps, state, and Federal resource agencies to quickly review many applications and determine if projects will have minimal impacts, instead of having permits for rigidly defined activities with less review.</li> </ul>
6. Survey Activities*	B. Tidal or Navigable Waters, (g) Miscellaneous, <b>Category I</b> .	
7. Outfall Structures*	B. Tidal or Navigable Waters, (g) Miscellaneous, <b>Category II</b> .	
8. Oil and Gas Structures*	B. Tidal or Navigable Waters, (g) Miscellaneous, <b>Category II</b> .	<u>Application Procedures</u>
9. Structures in Fleeting and Anchorage Areas	B. Tidal or Navigable Waters, (e) Moorings, <b>Category I</b> (absence of vegetated shallows) or <b>Category II</b> (presence of vegetated shallows).	<ul style="list-style-type: none"> <li>• Application submitted to state</li> <li>• State determines application complete</li> <li>• State instructs applicants to send copy of complete application to Corps</li> </ul>
10. Mooring Buoys	B. Tidal or Navigable Waters, (e) Moorings, <b>Category I</b> (absence of vegetated shallows) or <b>Category II</b> (presence of vegetated shallows).	<ul style="list-style-type: none"> <li>• Corps reviews with state and Federal resource agencies</li> </ul>
11. Temporary Recreational Structures	B. Tidal or Navigable Waters, (g) Miscellaneous, <b>Category I</b> .	<ul style="list-style-type: none"> <li>• Joint site visit with state, if needed</li> </ul>
12. Utility Line Discharges	B. Tidal or Navigable Waters, (g) Miscellaneous, <b>Category II</b> .	<ul style="list-style-type: none"> <li>• Corps sends letter stating eligible for Category II, need additional information, or Individual permit required.</li> </ul>

\* Rarely, if ever, occur in New England

† PGP covers more projects than NWPs. Minimal impact based on effects of fill, therefore any type of project could qualify, i.e. not limited to 40 (+/-) discrete activities.

<p><b>13. Bank Stabilization</b> - &lt; 500 ft and &lt; 1 c.y./linear ft.</p>	<p>A. Inland Waters and Wetlands, (b) Bank Stabilization Projects, <b>Category I</b> (&lt;500 ft. and &lt;1 c.y./linear ft., no wetland fill, TOY restriction) or <b>Category II</b> (&gt;500 ft. and/or &gt;1 c.y./linear ft.)†</p> <p>B. Tidal or Navigable Waters, (a) Fill, <b>Category II</b> (&lt;1 acre, no permanent fill in special aquatic sites). †</p>
<p><b>14. Road Crossings</b> – fill limited to 1/3 of an acre and no more than 200 linear ft in special aquatic sites</p>	<p>A. Inland Waters and Wetlands, (a) New Fill/Excavation Discharges, <b>Category I</b> (&lt;5,000 s.f., no work in special inland waters and wetlands, such as vernal pools, <b>but no limit on length</b>) or <b>Category II</b> (5,000 s.f. – 1 acre, <b>but no limit on length</b>).†</p> <p>B. Tidal or Navigable Waters, (a) Fill, <b>Category II</b> (&lt;1 acre, no permanent fill in special aquatic sites).</p>
<p><b>15. U.S. Coast Guard Approved Bridges</b> – no causeway and approach fills</p>	<p>B. Tidal or Navigable Waters, (g) Miscellaneous, <b>Category II</b> and B. Tidal or Navigable Waters, (a) <b>Fill, Category II</b> (&lt;1 acre, no permanent fill in special aquatic sites).†</p>
<p><b>16. Return Water from Upland Contained Disposal Areas</b></p>	<p>B. Tidal or Navigable Waters, (c) Dredging, <b>Category I</b> or <b>Category II</b>, depending on volume dredged.</p>
<p><b>17. Hydropower Projects*</b> – generating capacity &lt;5000 kW</p>	<p>A. Inland Waters and Wetlands, (a) New Fill/Excavation Discharges, <b>Category I</b> (&lt;5,000 s.f., no work in special inland waters and wetlands such as vernal pools, <b>but no limit on generating capacity</b>) or <b>Category II</b> (5,000 s.f. – 1 acre, <b>but no limit on generating capacity</b>).†</p>
<p><b>18. Minor Discharges</b> – discharges limited to 25 c.y. below OHW or HTL, &lt;1/10 acre impacts in special aquatic sites</p>	<p>A. Inland Waters and Wetlands, (a) New Fill/Excavation Discharges, <b>Category I</b> (&lt;5,000 s.f., no work in special inland waters and wetlands such as vernal pools) or <b>Category II</b> (5,000 s.f. – 1 acre).†</p> <p>B. Tidal or Navigable Waters, (a) Fill, <b>Category II</b> (&lt;1 acre, no permanent fill in special aquatic sites).†</p>
<p><b>19. Minor Dredging</b> – &lt;25 c.y. with upland disposal</p>	<p>B. Tidal or Navigable Waters, (c) Dredging, <b>Category I</b> (&lt;1,000 c.y., upland disposal, TOY restriction, no impacts to special aquatic sites) or <b>Category II</b> (maintenance dredging &gt;1000 c.y., allows open water disposal). <b>The PGP also allows up to 25,000 c.y. of new dredging with upland or open water disposal under Category II.</b>†</p>

♦ Rarely, if ever, occur in New England

† PGP covers more projects than NWP. Minimal impact based on effects of fill, therefore any type of project could qualify, i.e. not limited to 40 (+/-) discrete activities.

<b>20. Oil Spill Cleanup*</b>	B. Tidal or Navigable Waters, (g) Miscellaneous, <b>Category I.</b>
<b>21. Surface Coal Mining Activities*</b>	B. Tidal or Navigable Waters, (g) Miscellaneous, <b>Category II.</b>
<b>22. Removal of Vessels*</b>	B. Tidal or Navigable Waters, (g) Miscellaneous, <b>Category II.</b>
<b>23. Approved Categorical Exclusions</b>	Varies.
<b>24. State Administered Section 404 Programs</b>	N/A
<b>25. Structural Discharges</b>	A. Inland Waters and Wetlands, (a) New Fill/Excavation Discharges, <b>Category I</b> (<5,000 s.f., no work in special inland waters and wetlands such as vernal pools) or <b>Category II</b> (5,000 s.f. – 1 acre).  B. Tidal or Navigable Waters, (a) Fill, <b>Category II</b> (<1 acre, no permanent fill in special aquatic sites).
<b>26. Headwaters and Isolated Water Discharges</b> – all discharges < 3 acres, if > 1/3 acre requires notification to Corps; <u>NED modified NWP 26 to restrict fills to one acre.</u>	A. Inland Waters and Wetlands, (a) New Fill/Excavation Discharges, <b>Category I</b> (<5,000 s.f., no work in special inland waters and wetlands such as vernal pools) or <b>Category II</b> (5,000 s.f. – 1 acre).  <b>PGP fill categories are not limited to headwaters/ isolated waters. †</b> B. Tidal or Navigable Waters, (a) Fill, <b>Category II</b> (<1 acre, no permanent fill in special aquatic sites).
<b>27. Wetland and Riparian Restoration and Creation Activities</b>	A. Inland Waters and Wetlands, (a) New Fill/Excavation Discharges, <b>Category II (allows restoration of any aquatic resource). †</b>  B. Tidal or Navigable Waters, (a) Fill, <b>Category II (allows restoration of any aquatic resource). †</b>
<b>28. Modifications of Existing Marinas</b>	B. Tidal or Navigable Waters, (f) Pile-supported Structures and Floats, <b>Category II.</b>
<b>29. Single-Family Housing</b> – discharges < ½ acre	A. Inland Waters and Wetlands, (a) New Fill/Excavation Discharges, <b>Category I</b> (<5,000 s.f., no work in special inland waters and wetlands such as vernal pools) or <b>Category II (5,000 s.f. – 1 acre). †</b>

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† PGP covers more projects than NWPs. Minimal impact based on effects of fill, therefore any type of project could qualify, i.e. not limited to 40 (+/-) discrete activities.

<b>30. Moist Soil Management for Wildlife*</b>	A. Inland Waters and Wetlands, (a) New Fill/Excavation Discharges, <b>Category I</b> (<5,000 s.f., no work in special inland waters and wetlands such as vernal pools) or <b>Category II</b> (5,000 s.f. – 1 acre).
<b>31. Maintenance of Existing Flood Control Projects</b>	A. Inland Waters and Wetlands, (c) Repair and Maintenance of Authorized Fills, <b>Category I</b> (currently serviceable, no expansion or change in use) or <b>Category II</b> (non-serviceable, expansion <1 acre, and/or change in use).  B. Tidal or Navigable Waters, (b) Repair and Maintenance Work, <b>Category I</b> (currently serviceable, no expansion or change in use) or <b>Category II</b> ( non-serviceable, expansion <1 acre, and/or change in use).
<b>32. Completed Enforcement Actions</b> – discharges < 5 acres of nontidal wetlands and < 1 acre of tidal wetlands	Depends on type of work, mainly covered by: A. Inland Waters and Wetlands, (a) New Fill/Excavation Discharges, <b>Category I</b> (<5,000 s.f., no work in special inland waters and wetlands such as vernal pools) or <b>Category II</b> (5,000 s.f. – 1 acre).
<b>33. Temporary Construction, Access, and Dewatering</b>	A. Inland Waters and Wetlands, (a) New Fill/Excavation Discharges, <b>Category I</b> (<5,000 s.f., no work in special inland waters and wetlands such as vernal pools) or <b>Category II</b> (5,000 s.f. – 1 acre).  B. Tidal or Navigable Waters, (a) Fill, <b>Category II</b> (<1 acre, no permanent fill in special aquatic sites),
<b>34. Cranberry Production Activities</b> – disturbance < 10 acres	A. Inland Waters and Wetlands, (a) New Fill/Excavation Discharges, <b>Category I</b> (<5,000 s.f., no work in special inland waters and wetlands such as vernal pools) or <b>Category II</b> (5,000 s.f. – 1 acre).  B. Tidal or Navigable Waters, (a) Fill, <b>Category II</b> (<1 acre, no permanent fill in special aquatic sites).
<b>35. Maintenance Dredging of Existing Basins</b>	B. Tidal or Navigable Waters, (c) Dredging, <b>Category I</b> (<1,000 c.y., upland disposal, TOY restriction, no impacts to special aquatic sites) or <b>Category II</b> (maintenance dredging >1000 c.y., <b>allows open water disposal</b> ). † <b>The PGP also allows up to 25,000 c.y. of new dredging with upland or open water disposal under Category II. †</b>

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<p><b>36. Boat Ramps</b> – ramp &lt; 20 ft wide</p>	<p>A. Inland Waters and Wetlands, (a) New Fill/Excavation Discharges, <b>Category I</b> (&lt;5,000 s.f., no work in special inland waters and wetlands such as vernal pools, <b>but no limit on width</b>) or <b>Category II</b> (5,000 s.f. – 1 acre, <b>but no limit on width</b>). †</p> <p>B. Tidal or Navigable Waters, (a) Fill, <b>Category II</b> (&lt;1 acre, no permanent fill in special aquatic sites, <b>but no limit on width</b>). †</p>
<p><b>37. Emergency Watershed Protection and Rehabilitation</b>♦</p>	<p>A. Inland Waters and Wetlands, (a) New Fill/Excavation Discharges, <b>Category I</b> (&lt;5,000 s.f., no work in special inland waters and wetlands such as vernal pools) or <b>Category II</b> (5,000 s.f. – 1 acre).</p> <p>B. Tidal or Navigable Waters, (a) Fill, <b>Category II</b> (&lt;1 acre, no permanent fill in special aquatic sites).</p>
<p><b>38. Cleanup of Hazardous and Toxic Waste</b>♦</p>	<p>A. Inland Waters and Wetlands, (a) New Fill/Excavation Discharges, <b>Category I</b> (&lt;5,000 s.f., no work in special inland waters and wetlands such as vernal pools) or <b>Category II</b> (5,000 s.f. – 1 acre).</p> <p>B. Tidal or Navigable Waters, (a) Fill, <b>Category II</b> (&lt;1 acre, no permanent fill in special aquatic sites).</p>
<p><b>40. Farm Buildings</b>♦ – crop production prior to December 23, 1985, discharges &lt; 1 acre, notify Corps if within 500 linear ft of any flowing water</p>	<p>A. Inland Waters and Wetlands, (a) New Fill/Excavation Discharges, <b>Category I</b> (&lt;5,000 s.f., no work in special inland waters and wetlands such as vernal pools, <b>no minimal distance from flowing water</b>) or <b>Category II</b> (5,000 s.f. – 1 acre). †</p> <p>B. Tidal or Navigable Waters, (a) Fill, <b>Category II</b> (&lt;1 acre, no permanent fill in special aquatic sites).</p>

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## **NEW ENGLAND PROGRAMMATIC GENERAL PERMITS**

(prepared by the New England District, updated 3/20/98)

In 1980, the New England Division (NED) implemented the first broad-based programmatic general permit (PGP) in Maine that was based on the state's regulatory program and integrated the Federal resource agencies through screening and ability for automatic kick-out to individual permit. This PGP had no discrete categories of work, but rather operated based on a consensus decision of minimal environmental impact.

In the early 1990's, NED decided to integrate all of its general permits, including the Nationwide Permits, into the state PGPs to simplify and streamline Federal permitting for the public. There are now six comprehensive PGPs in place in the six New England states, covering all minimal impact work (section 404, Section 10, and dredging with open water disposal). These PGPs are structured into three categories as follows: minor work that is regulated by the state, which is non-reporting to the Corps of Engineers up to certain impact levels; work that is screened regularly by the Corps, Federal Resource Agencies, and in some cases state agencies for a determination of PGP eligibility; and work exceeding certain impact levels or kick-out as a result of screening, which requires an individual permit. The category levels are based on thresholds within the state regulatory program and Federal consensus regarding minimal impact projects.

The PGPs now cover up to 98% of the permit workload in a state. **All PGP reviews are complete within 15-30 days of receipt of a complete application.** In most states, applications are filed with the state agency and the Federal screening is **virtually transparent to applicants**, unless contact is needed to request additional information or if a project will be "kicked out" and subjected to individual permit review. Also, in most states, the Federal approval is included in or attached to the approval letter from the state. Since the PGP is based on stated thresholds, the Federal process has been significantly simplified and streamlined for the public.

The **PGPs also maintain or enhance environmental protection** because more projects are quickly screened with the opportunity for modification, mitigation, or kick-out than under the previous general permit scheme. The PGPs also contain a number of special conditions to protect endangered species, historic resources, and other issues of federal concern. The PGPs use the Federal wetlands definition and retain the Corps ability to exercise discretionary authority whenever necessary.

New England PGPs have received wide support from states, environmental interests, and applicants. They cover project formerly authorized by the Nationwide Permit program, regional general permits, Letters of Permission, and more, but with efficient environmental oversight by the Corps of engineers, states, and Federal resource agencies. Applicants have commented favorably about the simplicity, predictability, and efficiency of the PGPs.

Please contact Ms. Christine Godfrey at the New England District for additional information at (978) 318-8673 or write Regulatory Branch, CENAE-CO-R, 696 Virginia Road, Concord, Massachusetts 01742.

October 14, 1999

MEMORANDUM THRU Carol Coch, Regulatory Program Manager

FOR Commander, U.S. Army Engineer Division, North Atlantic

SUBJECT: Revocation of Nationwide Permits (NWPs) in Massachusetts

1. The NWPS in the State of Massachusetts will continue to be replaced by the comprehensive Programmatic General Permit (PGP) which will be reissued on/about November 1, 1999. Successful PGPs, including the MA PGP in place for the past five years, have replaced the NWPs throughout New England and have been widely supported.

2. Revocation of the NWPs in Massachusetts will allow the New England District to continue to fully utilize the PGP, to streamline the permit review process, and to maintain high efficiency for the public. The authority to revoke NWPs on a statewide basis is at the Division Engineer level pursuant to Title 33 CFR Part 330.4 (e) and .5.

3. In Public Notices dated June 8, 1999 and August 17, 1999 (attachments 1 and 2), the New England District proposed to reissue the PGP and revoke all NWPs in Massachusetts.

4. Once Revocation Decision and Statement of Findings (attachment 3) are signed, the District Regulatory Branch will issue the final Public Notice to inform the public of the decision to revoke the NWPs and to reissue the PGP.

3 Attachments

BRIAN OSTERNDORF  
COL, EN  
Commanding

PM  
PM

Cox  
PAIS ch

W  
Key Br (h)

FLC  
Con Ops (h)

MSG  
Council

D DE  
DE

CENAD-ET-O

MEMORANDUM FOR Commander, New England District

SUBJECT: Revocation of Nationwide Permits (NWPs) in Massachusetts

1. Reference your memorandum dated October 14, 1999, subject: Revocation of Nationwide Permits (NWPs) in Massachusetts).
2. Based on the authority given to me at Title 33 CFR Part 330.4 (e) and .5, I determined that it would be in the public interest to revoke the NWPs, based upon and described in the attached Statement of Findings (SOF), for the State of Massachusetts, effective November 1, 1999. The attached SOF details the revocation of the NWPs.
3. The Nationwide Permits are being revoked in Massachusetts to continue to reduce duplication and potential confusion for the regulated public, because the State of Massachusetts Programmatic General Permit, effective on/about November 1, 1999, will be available to authorize these same activities. The MA PGP has a five-year proven record of streamlining permitting and protecting the aquatic environment in Massachusetts.
4. Please provide my office with a copy of your Public Notice, as stated in 33 CFR Part 330.5(c)(2), announcing the effective date of this revocation action.
5. Should you have any questions regarding this action, please have your staff call my Regulatory Program Manager, Ms. Carol Coch, at 718-491-8728.

Atch

M. STEPHEN RHOADES  
BRIG GEN, USA  
Commanding

CENAD-ET-O (1145)

MEMORANDUM FOR RECORD

SUBJECT: Authorization to Proceed with the Revocation of Nationwide Permits in the State of Massachusetts – Statement of Findings

1. PROPOSAL: On August 17, 1999, the New England District, Corps of Engineers issued a public notice soliciting comments on the revocation of the Nationwide Permits (NWP) in the State of Massachusetts.

The proposal to revoke the NWPs and to continue to replace them with a Programmatic General Permit (PGP) follows similar actions taken in Massachusetts and the other New England states in the past. These PGPs have streamlined the Corps regulatory program and have more closely aligned Corps review with the state regulatory programs.

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 Permits for any specific geographic area, including on a statewide basis. The Corps must issue a public notice stating its concerns regarding the environment, give opportunity for comment and opportunity to request a public hearing, consider fully the view 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: Several comment letters in support of reissuing the PGP were received in response to the public notice for the PGP. Commenters included the Federal resource agencies, MA Audubon Society, Town of Pepperell, and MA Natural Heritage and Endangered Species Program. No comment letters were received in response to the public notice to revoke the NWPs in Massachusetts.

4. SUMMARY AND DECISION: This revocation of the NWPs in Massachusetts and continued replacement with the PGP is based on Corps experience throughout New England where the PGPs have resulted in a more effective, efficient Federal Regulatory Program based on good State-Federal participation. The State of Massachusetts has a state wetlands program of which the Corps took advantage, where possible, in creating this PGP.

The goals of this effort are multiple:

(1) Provide simplification and streamlining in the regulatory process.

Projects with minimal individual and cumulative effects on the aquatic environment will be approved administratively under the PGP. Projects with the potential for more than minimal effects will be subjected to individual permit review. Project eligibility will fall into two categories defined using the regional criteria in non-reporting projects (Category I) and reporting projects that will be screened (Category II). Non-reporting Category I projects will be able to proceed upon approval from the Massachusetts Department of Environmental Protection (MA DEP) without notification to the Corps provided all terms and conditions of the PGP are met.

Category II activities require reporting to the Corps and will be reviewed by the Corps, MA DEP, and the Federal resource agencies (U.S. Fish and Wildlife Service, U.S. Environmental Protection Agency, National Marine Fisheries Service). Through the interagency screening, the Corps will determine if individual and cumulative adverse environmental impacts are minimal and whether the project may proceed under the PGP.

Projects that do not meet the terms and conditions of the PGP will require an individual permit. The individual permit review procedures are not altered by the PGP. Federal exemptions (which are not necessarily the same as the State's exemptions) would also not be altered by the PGP. In addition, PGP authorizations will not be valid until all other required Federal, State, and local permits and/or certifications are obtained.

(2) Continue increased environmental sensitivity.

The Corps will have the ability to quickly screen many more projects with the Federal resource agencies in order to decide which impacts are appropriately reviewed under individual permit procedures. Additionally, the decision of ineligibility under the PGP will be much simpler and require less staff time than the discretionary authority procedures. Although the Corps reserves the right to take discretionary authority on any project where it determines it is necessary and in the public interest to do so.

The revocation of the NWP's will continue to allow maximum use of the PGP and result in a greatly simplified and expedited regulatory program in Massachusetts. Revocation of the NWPs will also reduce

confusion among the general public in Massachusetts regarding permitting processes.

The proposal to revoke all Nationwide Permits in the State of Massachusetts is hereby adopted.

5. REVIEW OF ACTIONS: The Division Engineer retains the right to review the effect of these actions, and to revise or rescind this decision if the public interest warrants. Unless specifically revised or rescinded, the decisions made herein remain in effect until November 1, 2004.

6. IMPLEMENTATION: The proposal decided herein will be effective on November 1, 1999 or upon approval by the undersigned, whichever is later.

---

M. STEPHEN RHOADES  
Brig Gen, USA  
Commanding

Date



**THE COMMONWEALTH OF MASSACHUSETTS**  
EXECUTIVE OFFICE OF ENVIRONMENTAL AFFAIRS  
OFFICE OF COASTAL ZONE MANAGEMENT  
100 CAMBRIDGE STREET, BOSTON, MA 02202  
(617) 626-1200 FAX: (617) 626-1240

01/03/99

October 8, 1999

William F. Lawless, P.E.  
Department of the Army  
New England District, Corps of Engineers  
696 Virginia Road  
Concord, MA 01742-2751

RE: Federal Consistency Certification: Renewal of the Massachusetts  
Programmatic General Permit; Statewide

Dear Mr. Lawless:

The Massachusetts Coastal Zone Management (MCZM) office has completed its review of the proposed renewal of the Massachusetts Programmatic General Permit (PGP). In the course of our review, MCZM has recommended and your staff have accepted the following modifications to the draft PGP included with the Corps' Public Notice dated June 8, 1999:

Stormwater - the Massachusetts Stormwater Management Policy as described in "Stormwater Management, Volume One: Stormwater Policy Handbook", March 1997, *et seq.* will be referenced in PGP Condition 19. Discharge of Pollutants.

Coastal Bank Stabilization - the following general condition will be added to the PGP:

Coastal bank stabilization projects involving reconstruction or maintenance of an existing structure should be designed to minimize environmental effects to the maximum extent practicable (includes minimization of scour, etc.).

With these modifications, 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 and your staff for your cooperation with MCZM on the development and renewal of the PGP. We have found this permit to be a particularly effective tool for protecting environmental resources while limiting the permitting process for eligible projects.

Sincerely,

A handwritten signature in black ink, appearing to read "Thomas W. Skinner". The signature is fluid and cursive, with a long horizontal flourish extending to the right.

Thomas W. Skinner,  
Director

TWS/JWM

Cc: Christine Godfrey,  
Regulatory Branch, US Army Corps of Engineers  
Karen Kirk Adams, Chief  
Regulatory Branch, US Army Corps of Engineers

1999 01470

**Chaisson, Bettina M NAE**

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**From:** Gaudet, Jody A NAE  
**Sent:** Tuesday, June 01, 1999 11:52 AM  
**To:** Chaisson, Bettina M NAE; Lally, Laura A NAE  
**Subject:** new file

Tina or Laura,

When you get a chance, please open a file for the MA Programmatic General Permit. Put Chris as the Section Chief, if possible. If not, put Karen. Let me know what the number is. I will take care of the rest.

Thanks,  
Jody

## Gaudet, Jody A NAE

---

**From:** Doug Thompson [thompson@ecr.gov]  
**Sent:** Tuesday, October 12, 1999 11:05 PM  
**To:** 'ED REINER'; 'Jody.A.Gaudet@nae02.usace.army.mil'; 'Eric.Hutchins@noaa.gov'; 'Christine.a.godfrey@usace.army.mil'; 'Jody.A.Gaudet@usace.army.mil'  
**Cc:** Doug Thompson; 'ALAFAT.BETH@epamail.epa.gov'; 'MADISON.STAFFORD@epamail.epa.gov'; 'MANFREDONIA.RONALD@epamail.epa.gov'; 'SCHWEISBERG.MATT@epamail.epa.gov'; 'WEBSTER.DAVID@epamail.epa.gov'; 'Philip\_Morrison@fws.gov'; 'Karen.K.Adams@nae02.usace.army.mil'; 'Jack.Terrill@noaa.gov'; 'Peter.Colosi@noaa.gov'  
**Subject:** RE: MA PGP modification. -Reply

I agree with the proposed change and Ed's commentary about it. Doug

-----Original Message-----

**From:** ED REINER  
**To:** Jody.A.Gaudet@nae02.usace.army.mil; Eric.Hutchins@noaa.gov; Christine.a.godfrey@usace.army.mil; Jody.A.Gaudet@usace.army.mil

**Cc:** thompson@ecr.gov; ALAFAT.BETH@epamail.epa.gov; MADISON.STAFFORD@epamail.epa.gov; MANFREDONIA.RONALD@epamail.epa.gov; SCHWEISBERG.MATT@epamail.epa.gov; WEBSTER.DAVID@epamail.epa.gov; Philip\_Morrison@fws.gov; Karen.K.Adams@nae02.usace.army.mil; Jack.Terrill@noaa.gov; Peter.Colosi@noaa.gov

**Sent:** 10/7/99 5:36 AM  
**Subject:** RE: MA PGP modification. -Reply

Jody and others.

I should have re-read that section. I did not realize that "we" already made the improvement. On the wording, however which states:

Any amount of fill associated with proactive wetland restoration...

Should or could this be clarified to include excavation discharges and secondary impacts? Some projects may involve excavation of sediments from storm drain input or other sources.

In regard to other Special Aquatic Sites, we probably only will have two types of projects:

Eel grass planting projects and dam removal projects. I believe one or two eel grass planting projects have probably proceeded under Category 2 approval to date, so this may not be a problem.

The dam removals, are intended to restore free flowing streams, rivers, with riffles and pool habitat if it's that type of river, and natural sediment movement patterns and fish passage. Dam removals require minimal fill, in fact it can be just an excavation discharge if no cofferdam

is involved, however, the secondary impacts to artificially created (impounded wetlands) or downstream flow patterns are what could exceed one acre.

I understand that changing upstream wetlands in the cases to date, have not caused great concern, and have in fact resulted in restoring the natural riverine wetlands in the modified, lowered upstream water levels.

You may be interested in knowing that several dam removals in CT, and 7 or 8 in Maine, were allowed under Category 2 or 1 in those states, despite greater than one acre of modified impoundment upstream, and downstream effects. So perhaps it is differently interpreted by the staff involved in the different units of the Corps. I would like the Massachusetts section, to treat these projects like the CT and ME units did for consistency.

>>> "Gaudet, Jody A NAE"

<Jody.A.Gaudet@nae02.usace.army.mil>

10/07/99 07:54am >>>

The public notice issued on June 8, 1999 for the PGP included language allowing proactive inland wetland restoration projects with any amount of fill under Category II. With that and the mod done in February, we will allow tidal and non-tidal wetland restoration projects to be reviewed under the Category II process. The question now is if we want to change "wetland restoration projects" to "special aquatic site restoration projects". I would also like to hear from FWS on this. Phil, please forward to Vern for me. I will discuss this further with Chris and Karen.

Thanks,  
Jody

-----Original Message-----

From: Eric Hutchins

[ <<mailto:Eric.Hutchins@noaa.gov>>]

Sent: Wednesday, October 06, 1999 9:07 AM

To: REINER.ED@epamail.epa.gov;

Christine.a.godfrey@usace.army.mil;

Jody.A.Gaudet@usace.army.mil

Cc: thompson@ecr.gov;

ALAFAT.BETH@epamail.epa.gov;

MADISON.STAFFORD@epamail.epa.gov;

MANFREDONIA.RONALD@epamail.epa.gov;

SCHWEISBERG.MATT@epamail.epa.gov;

WEBSTER.DAVID@epamail.epa.gov; Peter



me or them know, if you need their specific input or concurrence.

\*\*\*\*\*

In order to reduce the need for Individual permits for projects with the purpose of restoring or enhancing the natural functions and values of wetlands and other special aquatic sites (riffles and pools, eel grass and other submerged aquatic vegetation, or mudflats), beneficially affected areas should not be counted toward the one acre individual permit required threshold.

This would clarify that beneficial project impacts or effects as reviewed, evaluated and concurred with by the resource agencies may be approved in Category two even if the area affected exceeds one-acre.

We did this sort of thing for salt marsh restoration projects. EPA believes we can now do it for freshwater wetland restoration projects including river restoration dam removal projects and other special aquatic site restoration projects.

Naturally, projects will be screened and the resource agencies, or the Corps themselves, can require Individual Permits if the impacts or restoration projects provoke significant concerns.

EPA suggests we can use similar language as in the February 9, 1999 Public Notice Amending the PGP for proactive salt marsh restoration projects.

"All proactive wetland restoration projects and other special aquatic site restoration projects of any size, with the purpose of restoring or enhancing the natural functions and values of the wetland or other special aquatic sites, may be reviewed under Category II. If the Corps, in coordination with the Federal resource agencies, determines that a proposed restoration project will have more than minimal adverse impacts on the aquatic environment or public interest factors, and Individual Permit will be required."

Alternatively or perhaps in addition, we can add the word "adverse" before impacts in the Category II table for A. (a) Inland Waters and Wetlands of the U.S.

Jody,

I am forwarding you some information that was just sent to me regarding west coast salmon.

In case you did not hear, both USEWS and NMFS are turning up the screws on potentially listing Atlantic Salmon on the Endangered Species List. I do not know the up to the minute status, but something "big" with increasing the protected status is underway. The ESA involvement is independent of our review and pending recommendations pertaining to the MAPGP.

I know you are "chomping at the bit" to finalize the MADPGP and I am sorry if the Salmon issue is causing you some head-aches. Believe me, I sometimes wish the fish went extinct already! (Only joking!) Anyway, the September 30th meeting went well here with the NMFS Habitat/Protected Resources meeting on the subject. The meeting went just as I expected as outlined below...

I. Do we think we should be taking a closer look at wetland and waterway 10/404 projects within and adjacent to Atlantic Salmon EFH? A uniform yes.

II. Do we want to review all 10/404 wetland and waterway fills and dredging throughout the watersheds?  
A uniform No. We have no desire to review a backyard wetland fill of 300 sf located 1/2 mile of any water that would ever support salmon.

III. We were all in agreement that it would be preferable to focus any of our efforts on wetlands and waterway impacts located "X" feet from perennial streams/rivers.

IV. After speaking with Grant, Karen and yourself about the subject, the best frame of reference will be to tie into Ordinary High Water as the bench

hmark.

I stressed quite strongly to my Division that it would be prudent to provide the Corps with official comments on the subject as soon as possible which everyone here respects. I am currently on vacation. Can't you tell, here I am at my office at 5:30 am on Columbus Day! I was here on Saturday too. Suffice it is to say, now that I have presented the facts and some of the options to the upper level staff here (Division Chiefs), I am going to put the pressure on for them to develop and put forward a solid recommendation to the Corps. My target is to get something written to the Corps BEFORE the end of this month and hopefully by 10/22.

I will be back in the office on thursday (14th). Off to Maine this morning for some needed R & R.

Eric W. Hutchins  
Fisheries Biologist  
National Marine Fisheries Service  
Habitat Conservation Division  
1 Blackburn Drive  
Gloucester, MA 01930

P: 978-281-9313  
F: 978-281-9301  
E: eric.hutchins@noaa.gov

Forward Header

Subject: CA and OR Scientific Assessments of Forest Practices  
Author: FISH1IFR@aol.com  
Date: 10/09/1999 8:26 PM

To Whom it May Concern:

Under the Oregon Plan for Salmon and Watersheds, the Independent Multi-disciplinary Scientific Team (IMST) was appointed by the Oregon State Legislature to review and comment on scientific issues related to salmon restoration. One of those issues put to the IMST was the sufficiency of the Oregon Forest Practices Act to prevent salmon extinction.

After working on it for well over a year, the IMST issued its analysis of the sufficiency of Oregon Forest Practices Act on September 14, 1999, to the Governor and State Legislature (IMST Technical Report 1999-1). The IMST concluded that Oregon's laws are seriously deficient in several respects, including lack of riparian protections for many streams (including small non-fish bearing streams), lack of cumulative impacts assessments, and inadequate protections on steep slope or high risk areas. Though they did not make specific policy recommendations as to the width of buffer zones or other specific changes, and also did not deal with 'east-side' forests in this report, given the high-caliber nature of the Scientific Team, the status as a Legislatively appointed body, and their central role in Oregon's salmon recovery efforts, as well as the Report's fairly scathing conclusions, this report will be the basis for Oregon forestry reform efforts for several years to come, and will also likely impact similar efforts in other states, particularly in Washington State (which has a very similar forest ecosystem).

The IMST Report 1999-1 (Recovery of Wild Salmonids in Western Oregon Forests: Oregon Forest Practices Act Rule and the Measures in the Oregon Plan for Salmon and Watersheds) is NOW ON THE INTERNET AT:

<<http://www.oregon-plan.org/reports.html>>

From there one can go to a PDF format file containing the whole report (about 90 pages). Its a good read.

This Report parallels many of the same conclusions reached by the Scientific Review Panel on Forest Practices and Salmon Protection commissioned by the California Resources Agency and National Marine Fisheries Service (NMFS) issued June, 1999. Given the fact that the IMST did no

t have access to the CA report until they had already done their analysis within the IMST, the similarities of conclusions are quite striking and it highlights the general inadequacy of forest practices on private lands generally.

The Report of the Scientific Review Panel of California Forest Practice Rules and Salmon Habitat (June, 1999) analyzing the California Forest Practice Act is also available on the Internet at:

<<http://www.ceres.ca.gov/cra/srp.html>>

This link takes you to a cover page, and a link from there takes you to a PDF file with the whole report (about 120 pages).

The impact of these two key scientific reports is to point out in bold relief the failure of state forest practices to protect salmonid habitat at -- as a matter of scientific concern. We believe they will be useful to anyone working on private forestland habitat issues, on forestry HCP's or similar forested landscapes.

We are sending this bulletin to several lists. Please forgive any cross-postings. Also, feel free to forward this to colleagues who might be interested.

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Glen Spain, Program Director  
Institute for Fisheries Resources (IFR)  
PO Box 11170, Eugene, OR 97440-3370  
(541)689-2000 Fax: (541)689-2500  
Home Page: <<http://www.pond.net/~fishlifr>>

## Gaudet, Jody A NAE

---

**From:** Gaudet, Jody A NAE [Jody.A.Gaudet@nae02.usace.army.mil]  
**Sent:** Friday, October 08, 1999 10:17 AM  
**To:** 'ED REINER'; Gaudet, Jody A NAE; Eric.Hutchins@noaa.gov;  
Christine.a.godfrey@usace.army.mil; Jody.A.Gaudet@usace.army.mil  
**Cc:** thompson@ecr.gov; ALAFAT.BETH@epamail.epa.gov;  
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SCHWEISBERG.MATT@epamail.epa.gov; WEBSTER.DAVID@epamail.epa.gov;  
Philip\_Morrison@fws.gov; Adams, Karen K NAE; Jack.Terrill@noaa.gov;  
Peter.Colosi@noaa.gov  
**Subject:** RE: MA PGP modification. -Reply

The word "fill" does include excavation discharges and secondary impacts.  
But to avoid further confusion, what if we just say, "All proactive  
restoration projects with any amount of impacts..."?

Jody

-----Original Message-----

**From:** ED REINER [mailto:REINER.ED@epamail.epa.gov]  
**Sent:** Thursday, October 07, 1999 8:37 AM  
**To:** Jody.A.Gaudet@nae02.usace.army.mil; Eric.Hutchins@noaa.gov;  
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Jack.Terrill@noaa.gov; Peter.Colosi@noaa.gov  
**Subject:** RE: MA PGP modification. -Reply

Jody and others.

I should have re-read that section. I did not  
realize that "we" already made the improvement.  
On the wording, however which states:

Any amount of fill associated with proactive  
wetland restoration...

Should or could this be clarified to include  
excavation discharges and secondary impacts?  
Some projects may involve excavation of  
sediments from storm drain input or other  
sources.

In regard to other Special Aquatic Sites, we  
probably only will have two types of projects:

Eel grass planting projects and dam removal  
projects. I believe one or two eel grass planting  
projects have probably proceeded under  
Category 2 approval to date, so this may not be  
a problem.

The dam removals, are intended to restore free  
flowing streams, rivers, with riffles and pool  
habitat if it's that type of river, and natural  
sediment movement patterns and fish passage.  
Dam removals require minimal fill, in fact it can  
be just an excavation discharge if no cofferdam  
is involved, however, the secondary impacts to  
artificially created (impounded wetlands) or  
downstream flow patterns are what could exceed

the cases to date, have not caused great concern, and have in fact resulted in restoring the natural riverine wetlands in the modified, lowered upstream water levels.

You may be interested in knowing that several dam removals in CT, and 7 or 8 in Maine, were allowed under Category 2 or 1 in those states, despite greater than one acre of modified impoundment upstream, and downstream effects. So perhaps it is differently interpreted by the staff involved in the different units of the Corps. I would like the Massachusetts section, to treat these projects like the CT and ME units did for consistency.

>>> "Gaudet, Jody A NAE"

<Jody.A.Gaudet@nae02.usace.army.mil>  
10/07/99 07:54am >>>

The public notice issued on June 8, 1999 for the PGP included language allowing proactive inland wetland restoration projects with any amount of fill under Category II. With that and the mod done in February, we will allow tidal and non-tidal wetland restoration projects to be reviewed under the Category II process. The question now is if we want to change "wetland restoration projects" to "special aquatic site restoration projects". I would also like to hear from FWS on this. Phil, please forward to Vern for me. I will discuss this further with Chris and Karen.

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SCHWEISBERG.MATT@epamail.epa.gov;  
WEBSTER.DAVID@epamail.epa.gov; Peter  
Colosi; Jack Terrill  
Subject: Re:MA PGP modification.

As I helped promote and develop the language for the PGP changes associated with promoting marine habitat restoration, I am in complete agreement with Ed Reiners suggested language. It is completely in line with the appropriate modifications to the PGP that were promulgated for salt marsh restoration projects. I was at yesterday's Dam removal where I participated in this

Eric W. Hutchins P:  
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Fisheries Biologist F:  
978-281-9301  
National Marine Fisheries Service E:  
eric.hutchins@noaa.gov  
Habitat Conservation Division  
1 Blackburn Drive  
Gloucester, MA 01930

-----Original Message-----

From: ED REINER  
[mailto:REINER.ED@epamail.epa.gov]  
Sent: Wednesday, October 06, 1999 8:36 AM  
To: Jody.A.Gaudet@usace.army.mil  
Cc: ALAFAT.BETH@epamail.epa.gov;  
MADISON.STAFFORD@epamail.epa.gov;  
MANFREDONIA.RONALD@epamail.epa.gov;  
SCHWEISBERG.MATT@epamail.epa.gov;  
WEBSTER.DAVID@epamail.epa.gov  
Subject: MA PGP modification.

Jody and Chris:

At a meeting with Karen Adams yesterday, discussing a small dam removal project, it was mentioned that the current PGP does not distinguish between adverse and beneficial impacts in determining if a project exceeds the one acre threshold for category 2 approval (freshwater wetland fill/excavation discharges).

Karen suggested it may not be too late to modify the PGP if we got you a letter or note this week. Considering the urgency, I hope this e-mail will suffice.

I am sending a copy of this suggestion to my supervisor and to Ron Manfredonia as well. Let me or them know, if you need their specific input or concurrence.

\*\*\*\*\*

In order to reduce the need for Individual permits for projects with the purpose of restoring or enhancing the natural functions and values of wetlands and other special aquatic sites (riffles and pools, eel grass and other submerged aquatic vegetation, or mudflats), beneficially affected areas should not be counted toward the one acre individual permit required threshold.

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## Gaudet, Jody A NAE

---

**From:** Adams, Karen K NAE  
**Sent:** Thursday, October 07, 1999 9:28 AM  
**To:** Gaudet, Jody A NAE  
**Subject:** RE: MA PGP modification.

Adding "adverse" in front of impacts is the simple solution and consistent with the NWs however it takes us further away again from the state program.

-----Original Message-----

**From:** Gaudet, Jody A NAE  
**Sent:** Thursday, October 07, 1999 7:55 AM  
**To:** 'Eric Hutchins'; REINER.ED@epamail.epa.gov; Christine.a.godfrey@usace.army.mil; Jody.A.Gaudet@usace.army.mil  
**Cc:** thompson@ecr.gov; ALAFAT.BETH@epamail.epa.gov; MADISON.STAFFORD@epamail.epa.gov; MANFREDONIA.RONALD@epamail.epa.gov; SCHWEISBERG.MATT@epamail.epa.gov; WEBSTER.DAVID@epamail.epa.gov; Peter Colosi; Jack Terrill; Adams, Karen K NAE; 'Philip\_Morrison@fws.gov'  
**Subject:** RE: MA PGP modification.

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## Gaudet, Jody A NAE

---

**From:** Adams, Karen K NAE  
**Sent:** Thursday, October 07, 1999 12:03 PM  
**To:** 'ED REINER'; Gaudet, Jody A NAE; Eric.Hutchins@noaa.gov  
**Subject:** RE: MA PGP modification. -Reply

I think we should start reviewing ALL projects in Massachusetts the same as they are reviewed in Maine.

-----Original Message-----

From: ED REINER [mailto:REINER.ED@epamail.epa.gov]  
Sent: Thursday, October 07, 1999 8:37 AM  
To: Jody.A.Gaudet@nae02.usace.army.mil; Eric.Hutchins@noaa.gov;  
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Jody and others.

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I understand that changing upstream wetlands in the cases to date, have not caused great concern, and have in fact resulted in restoring the natural riverine wetlands in the modified, lowered upstream water levels.

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## Gaudet, Jody A NAE

---

**From:** Kelly, Grant NAE  
**Sent:** Friday, October 08, 1999 10:07 AM  
**To:** Gaudet, Jody A NAE  
**Cc:** Henry Barbaro (E-mail)  
**Subject:** PGP I - Time -of-Year Restriction

I am withdrawing my request for modification of the subject provision of the MA PGP. I had understood that USFWS would find a letter from MA DFW addressing site specific issues as fulfilling their review needs. In a conversation with Vern Lange of USFWS on 10/7/99, he stated that he believes that the focus of DFW's review of the site is the cold water fisheries...trout, etc. He does not feel that they would provide adequate review of potential project impacts to other riverine fauna, if work were to occur outside of the proscribed low-flow window. He is unwilling to accept the DFW letter as a surrogate for USFWS review.

## Gaudet, Jody A NAE

---

**From:** Kelly, Grant NAE  
**Sent:** Thursday, October 07, 1999 2:20 PM  
**To:** Gaudet, Jody A NAE  
**Subject:** RE: Re-issuance of Programmatic General Permit

Thanks. G.

-----Original Message-----

**From:** Gaudet, Jody A NAE  
**Sent:** Thursday, October 07, 1999 8:47 AM  
**To:** Kelly, Grant NAE  
**Subject:** FW: Re-issuance of Programmatic General Permit

Grant,

I talked to Vern about the TOY issue. He would like to discuss it with you. He will be calling you.

Jody

-----Original Message-----

**From:** Gaudet, Jody A NAE  
**Sent:** Thursday, October 07, 1999 7:58 AM  
**To:** Kelly, Grant NAE  
**Subject:** RE: Re-issuance of Programmatic General Permit

How are your negotiations with the Div of Fisheries going? Eric will concur with whatever FWS says. Now I am playing phone tag with Vern Lang.

Jody

-----Original Message-----

**From:** Kelly, Grant NAE  
**Sent:** Monday, October 04, 1999 7:32 AM  
**To:** Adams, Karen K NAE; Gaudet, Jody A NAE  
**Cc:** Godfrey, Christine A NAE  
**Subject:** RE: Re-issuance of Programmatic General Permit

I'll have MHD estimate what % of PGP authorizations already issued might not be started by 03/01 or completed by 03/02. As far as MHD goes, they routinely get letters from MA DFW for all stream crossing projects. I think that, along with municipal crossing projects, accounts for the bulk of bridge/culvert jobs in the state. I don't think that the municipal work would overwhelm DFW. I'll check with them. G.

-----Original Message-----

**From:** Adams, Karen K NAE  
**Sent:** Thursday, September 30, 1999 5:06 PM  
**To:** Kelly, Grant NAE; Gaudet, Jody A NAE  
**Cc:** Godfrey, Christine A NAE  
**Subject:** RE: Re-issuance of Programmatic General Permit

I am concerned about automatically giving anyone an additional 5 years. I could agree that giving them until 3/2001 to start would be ok with completion within a year. That could be true for all projects.

Are the MA fisheries agencies willing to have everyone contact them for site specific info and provide a written response for site specific TOY restrictions? I think everyone could agree to letting a written determination from one of the 2 state agencies supercede the general TOY if they understand the role they will now be playing in this.

## Gaudet, Jody A NAE

---

**From:** Kelly, Grant NAE  
**Sent:** Thursday, October 07, 1999 2:19 PM  
**To:** Gaudet, Jody A NAE  
**Subject:** RE: Re-issuance of Programmatic General Permit

I have Henry Barbaro of MHD contacting MA DMF....I'm waiting to hear. Is there a drop-dead date for you to know that it's OK with DMF?

-----Original Message-----

**From:** Gaudet, Jody A NAE  
**Sent:** Thursday, October 07, 1999 7:58 AM  
**To:** Kelly, Grant NAE  
**Subject:** RE: Re-issuance of Programmatic General Permit

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-----Original Message-----

**From:** Kelly, Grant NAE  
**Sent:** Thursday, September 30, 1999 2:49 PM  
**To:** Gaudet, Jody A NAE  
**Cc:** Adams, Karen K NAE; Godfrey, Christine A NAE  
**Subject:** FW: Re-issuance of Programmatic General Permit

Comments from MHD on pending PGP re-issuance.

-----Original Message-----

**From:** Barbaro-DPW, Henry [mailto:Henry.Barbaro@state.ma.us]

Hi Grant,

We are aware that the Army Corps now is developing a new Programmatic General Permit (PGP) to supersede the PGP dated 3/1/95. Based on the past 5 years' experience with this permitting system, MassHighway has two specific concerns: 1) permit expiration, and 2) the PGP work window (7/15 - 10/1) for stream crossings.

1) Permit Expiration: The PGP that currently is in effect will expire on March 1, 2000. According to General Requirement #31 of the PGP, projects that have commenced prior to this date are grandfathered for an additional year.

However, MassHighway projects are commonly subject to delays due to problems with funding, contractor selection, etc. We are concerned that many dozens of our un-built projects will have expired PGPs as of 3/1/2000.

We would appreciate a provision in the next version of the PGP that would allow for projects with existing PGPs (issued prior to 3/1/2000) to have their PGP be valid for, say, another 5 years.

This would mutually save our agencies many hours of re-filing for expired PGPs in order to authorize formerly-approved projects.

2) PGP Work Window: In an effort to streamline the permitting process for projects qualifying for a PGP, we would like to refine the criteria which triggers a project to go through the PGP II process for what otherwise would be a PGP I process. This specifically relates to the work window requirement (7/15 - 10/1) for waterway crossings.

General Requirement #17 states that projects being conducted outside of that (typically) low flow period "shall be screened pursuant to Category II." The purpose of this requirement is to protect fish spawning habitat and migration patterns.

As stated above, MassHighway projects often are subject to delays. Consequently, even though we may intend to work within the 7/15 - 10/1 range, oftentimes this cannot be done. In these instances MassHighway has had to go back to re-file for a PGP II. This permitting process involves a Joint Processing meeting, with multi-agency review, as well as a (Cultural) Section 106 review process.

Rather than go through this additional process, we propose that in the cases where we must work beyond the 7/15 - 10/1 period, that we abide by any work-in-water time requirements as recommended by the Mass. Division of Fisheries and Wildlife as well as the Mass. Division of Marine Fisheries (and incorporate this clearance into a PGP I approval). It is our hope that in these cases (i.e., projects proposing work outside of the 7/15 - 10/1 window) where there are no threatened, endangered, anadromous/catadromous, or otherwise commercially important fish, that a relatively small stream crossing project (i.e., less than 5,000 s.f. impact to "waters") could be authorized through a PGP I only.

Please let me know if you have any questions regarding these two proposals. We believe that they make good common sense, and will save many hours of unnecessary permitting process.

Thanks,  
Henry

## Gaudet, Jody A NAE

---

**From:** Eric Hutchins [Eric.Hutchins@noaa.gov]  
**Sent:** Wednesday, October 06, 1999 7:00 AM  
**To:** Jody.A.Gaudet@nae02.usace.army.mil  
**Cc:** Vernon.Lang@mail.fws.gov; Philip.Morrison@fws.gov  
**Subject:** Re:TOY restrictions

Jody,

You indicated that the PGP Cat I/II TOY issue that you are referring to regards non-anadromous fishery streams and rivers. As long the the waterbodies are not designated as Atlantic Salmon EFH (Connecticut River and Merrimack River Watersheds) or sustain other anadromous fish runs (smelt, alewife, blueback herring and American Shad), I will completely defer the TOY question to USFWS.

As you are aware NMFS is trying to develop a recommended threshold that will cover projects that could adversely affect Atlantic Salmon EFH.

Eric W. Hutchins	P: 978-281-9313
Fisheries Biologist	F: 978-281-9301
National Marine Fisheries Service	E: eric.hutchins@noaa.gov
Habitat Conservation Division	
1 Blackburn Drive	
Gloucester, MA 01930	

## Gaudet, Jody A NAE

---

**From:** Kelly, Grant NAE  
**Sent:** Monday, October 04, 1999 7:32 AM  
**To:** Adams, Karen K NAE; Gaudet, Jody A NAE  
**Cc:** Godfrey, Christine A NAE  
**Subject:** RE: Re-issuance of Programmatic General Permit

I'll have MHD estimate what % of PGP authorizations already issued might not be started by 03/01 or completed by 03/02. As far as MHD goes, they routinely get letters from MA DFW for all stream crossing projects. I think that, along with municipal crossing projects, accounts for the bulk of bridge/culvert jobs in the state. I don't think that the municipal work would overwhelm DFW. I'll check with them. G.

-----Original Message-----

**From:** Adams, Karen K NAE  
**Sent:** Thursday, September 30, 1999 5:06 PM  
**To:** Kelly, Grant NAE; Gaudet, Jody A NAE  
**Cc:** Godfrey, Christine A NAE  
**Subject:** RE: Re-issuance of Programmatic General Permit

I am concerned about automatically giving anyone an additional 5 years. I could agree that giving them until 3/2001 to start would be ok with completion within a year. That could be true for all projects.

Are the MA fisheries agencies willing to have everyone contact them for site specific info and provide a written response for site specific TOY restrictions? I think everyone could agree to letting a written determination from one of the 2 state agencies supercede the general TOY if they understand the role they will now be playing in this.

-----Original Message-----

**From:** Kelly, Grant NAE  
**Sent:** Thursday, September 30, 1999 2:49 PM  
**To:** Gaudet, Jody A NAE  
**Cc:** Adams, Karen K NAE; Godfrey, Christine A NAE  
**Subject:** FW: Re-issuance of Programmatic General Permit

Comments from MHD on pending PGP re-issuance.

-----Original Message-----

**From:** Barbaro-DPW, Henry [mailto:Henry.Barbaro@state.ma.us]  
**Sent:** Wednesday, September 29, 1999 4:09 PM  
**To:** Grant.Kelly@usace.mil; Grant.Kelly@usace.army.mil;  
Grant.Kelly@usace.army.mil  
**Subject:** Re-issuance of Programmatic General Permit

Hi Grant,

We are aware that the Army Corps now is developing a new Programmatic General Permit (PGP) to supersede the PGP dated 3/1/95. Based on the past 5 years' experience with this permitting system, MassHighway has two specific concerns: 1) permit expiration, and 2) the PGP work window (7/15 - 10/1) for stream crossings.

1) Permit Expiration: The PGP that currently is in effect will expire on March 1, 2000. According to General Requirement #31 of the PGP, projects that have commenced prior to this date are grandfathered for an additional year.

However, MassHighway projects are commonly subject to delays due to problems with funding, contractor selection, etc. We are concerned that many dozens of our un-built projects will have expired PGPs as of 3/1/2000.

We would appreciate a provision in the next version of the PGP that would allow for projects with existing PGPs (issued prior to 3/1/2000) to have their PGP be valid for, say, another 5 years.

This would mutually save our agencies many hours of re-filing for expired PGPs

- triggers a project to go through the PGP II process for what otherwise would be a PGP I process. This specifically relates to the work window requirement (7/15 - 10/1) for waterway crossings.

General Requirement #17 states that projects being conducted outside of that (typically) low flow period "shall be screened pursuant to Category II." The purpose of this requirement is to protect fish spawning habitat and migration patterns.

As stated above, MassHighway projects often are subject to delays. Consequently, even though we may intend to work within the 7/15 - 10/1 range, oftentimes this cannot be done. In these instances MassHighway has had to go back to re-file for a PGP II. This permitting process involves a Joint Processing meeting, with multi-agency review, as well as a (Cultural) Section 106 review process.

Rather than go through this additional process, we propose that in the cases where we must work beyond the 7/15 - 10/1 period, that we abide by any work-in-water time requirements as recommended by the Mass. Division of Fisheries and Wildlife as well as the Mass. Division of Marine Fisheries (and incorporate this clearance into a PGP I approval). It is our hope that in these cases (i.e., projects proposing work outside of the 7/15 - 10/1 window) where there are no threatened, endangered, anadromous/catadromous, or otherwise commercially important fish, that a relatively small stream crossing project (i.e., less than 5,000 s.f. impact to "waters") could be authorized through a PGP I only.

Please let me know if you have any questions regarding these two proposals. We believe that they make good common sense, and will save many hours of unnecessary permitting process.

Thanks,  
Henry

Grant

- send 1 letter to ext auth already there
- Form letter for future auth giving time beyond POP exp.

Duration of authorization

3 yrs or until exp of POP, <sup>Max of 5 years</sup> whichever is longer

→ Chris will contact OCE  
write up something in S.C. 31?

Fish T.O.Y.

Grant - Phil will sign off if state says ok for nonanadromous fish habitat

Div. of Fisheries → times approx. T.O.Y. if nec.  
Cat I outside window 2 →

Fish T.O.Y.

NMFS, FWS



coordinate with agencies, D.V. of Fish.

Grant w/ contact Div. Fish. using MTD leverage  
want specific T.O.Y. of state "no T.O.Y."  
in letter from Div. of Fish.

leave option for std T.O.Y. OR  
pursuant to T.O.Y. instr. by D.V. of Fish.

## Gaudet, Jody A NAE

---

**From:** ED REINER [REINER.ED@epamail.epa.gov]  
**Sent:** Friday, October 01, 1999 8:07 AM  
**To:** Jody.A.Gaudet@nae02.usace.army.mil; Jody.A.Gaudet@usace.army.mil  
**Cc:** ALAFAT.BETH@epamail.epa.gov; MADISON.STAFFORD@epamail.epa.gov;  
SCHWEISBERG.MATT@epamail.epa.gov  
**Subject:** RE: vernal pools -Forwarded -Forwarded -Reply

This is acceptable. Thank you for all your help on this important EPA concern.

>>> "Gaudet, Jody A NAE"  
<Jody.A.Gaudet@nae02.usace.army.mil>  
10/01/99 07:49am >>>  
Ed,

Our concern is that people are going to find things like green frogs, which are facultative and can be found in just about any puddle or area with water, and send their project in for review. What if we specify, "caddisfly casings or fingernail clams" instead of using all facultative species? We would be more comfortable with that.

Let me know.

Thanks,  
Jody

-----Original Message-----

From: ED REINER  
[mailto:REINER.ED@epamail.epa.gov]  
Sent: Wednesday, September 29, 1999 4:27 PM  
To: Jody.A.Gaudet@usace.army.mil  
Cc: ALAFAT.BETH@epamail.epa.gov;  
MADISON.STAFFORD@epamail.epa.gov;  
SCHWEISBERG.MATT@epamail.epa.gov  
Subject: re: vernal pools -Forwarded -Forwarded

Jody.

The reason facultative species are useful in the language is that the obligates are only found there for 3 months or so. During the off-season, the only way to identify a potential vernal pool is by the facultative species like fingernail clams or caddis fly homes. This is why EPA would like to keep the facultative species in the language.

Also see Matt Burns comment on the same.



US Army Corps  
of Engineers  
New England District

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

COMMAND/ OFFICE		NAME/ OFFICE SYMBOL	OFFICE TELEPHONE NO. (AUTOVON/Comm.)		FAX NO. (AUTOVON/Comm.)	
FROM:						
Jody Gaudet		LENAE-(O-R)	(978) 318-8860		(978) 318-8303	
TO:						
Jane Mead		CZM	(617) 626-1216		(617) 626-1240	
CLASSIFICATION	PRECEDENCE	NO. PAGES (Including this Header)	DATE-TIME	MONTH	YEAR	RELEASER'S SIGNATURE
		2	9:50am 9/29/99			Jody Gaudet

REMARKS  
draft General condition  
for your review

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## General condition

Coastal bank stabilization projects involving reconstruction or maintenance of an existing structure should be designed to minimize environmental effects to the maximum extent practicable (includes minimization of scour, etc.)



US Army Corps  
of Engineers  
New England District

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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: Jody Gaudet	CENAF-CO-R	(978) 318-8860	(479) 318-8303			
TO: Lois Bruinooge	DEP	(617) 242-5428 (508) 767-2819	(617) 292-5696 (508) 792-7621			
CLASSIFICATION	PRECEDENCE	NO. PAGES (Including this Header)	DATE-TIME	MONTH	YEAR	RELEASER'S SIGNATURE
		19	10:00am 9/21/99			Jody Gaudet

REMARKS Lois, I am faxing this to Boston + Worcester to be sure that you get it. This is the entire MAP&P in its current form. I have selected all of the changes since the Public notice. I am still waiting to finalize things with C&M. Also waiting for NMFS regarding EFH.

Space Below For Communications Center Use Only

DA FORM 3918-R,  
JUL 90

DA FORM 3918-R, AUG 72 IS  
OBSOLETE

USAPPG V2.10

Please let me know if you have any changes or comments ASAP.  
Note that I have changed the vernal pool language since I sent it to you last week.

Thanks,  
Jody

## DRAFT

Application No.: 199901470

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) proposes to issue 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, 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 page 11 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.

## Gaudet, Jody A NAE

---

**From:** Howard, Paul F NAE  
**Sent:** Monday, September 20, 1999 2:03 PM  
**To:** Gaudet, Jody A NAE  
**Subject:** BMP's for MAPGP

Jody,

This is what I wrote for Grant's Rte. 44 permit. Some time ago Bill asked me to revise our BMP conditions. This was one attempt at it. I forget if I changed No. 2 from the current version in Regdocs, but I know I changed No. 3.

Paul

2. Adequate sedimentation and erosion control devices, such as geotextile silt fences, sediment trenches, hay bales or other devices capable of filtering the fines involved, shall be installed and properly maintained to minimize adverse impacts on waters of the U.S. (including wetlands) during construction, including activities such as upland clearing, grubbing, excavation and grading. These devices shall be removed upon completion of work and stabilization of disturbed areas. The sediment collected by these devices shall also be removed and placed upland, in a manner that will prevent its later erosion and transport to a water of the U.S.

3. Waters of the U.S. (including wetlands) which are disturbed during construction and which are not authorized to be permanently filled shall be restored to their approximate original elevation (but not higher) and condition by careful protection, and/or removal and replacement, of existing soil and vegetation. No temporary fill (e.g., access roads, meadow mats, cofferdams) shall be placed in waters of the U.S. (including wetlands) unless specifically authorized by this permit. Unconfined temporary fill authorized to be discharged into flowing water (rivers or streams) shall consist of clean washed stone. Authorized temporary fill shall be maintained during construction to prevent its eroding into waters of the U.S. where it is not authorized. Temporary fill shall be removed as soon as it is no longer needed and it shall be disposed of at an upland site and suitably contained to prevent its subsequent erosion into a water of the U.S.



**THE COMMONWEALTH OF MASSACHUSETTS**  
EXECUTIVE OFFICE OF ENVIRONMENTAL AFFAIRS  
OFFICE OF COASTAL ZONE MANAGEMENT  
100 CAMBRIDGE STREET, BOSTON, MA 02202  
(617) 626-1200 FAX: (617) 626-1240

September 17, 1999

William F. Lawless, P.E. , Chief  
Attn: Christine Godfrey  
Regulatory Branch  
Dept. of the Army  
New England District  
Corps of Engineers  
696 Virginia Road  
Concord, MA 01742-2751

Re: Massachusetts Programmatic General Permit; Statewide

Dear Ms. Godfrey;

On August 12, 1999, the Army Corps of Engineers and the Massachusetts Coastal Zone Management (MCZM) Program mutually agreed to extend MCZM's review of the proposed reissuance of the Massachusetts Programmatic General Permit (PGP) until September 15, 1999. The two agencies are in general agreement on modifications to the PGP with regard to stormwater and coastal bank stabilization, however the language is not yet final. MCZM therefore recommends that we agree to extend this federal consistency review until October 1, 1999.

Thank you for your consideration of this recommendation.

Very truly yours,

Jane W. Mead  
Sr. Project Review Coordinator

RECEIVED

SEP 22 1999

REGISTRATION DIVISION

## Gaudet, Jody A NAE

---

**From:** Pasternak, Gary A NAE  
**Sent:** Monday, September 20, 1999 11:29 AM  
**To:** Gaudet, Jody A NAE  
**Subject:** RE: MAPGP applications and abutter notification

Ma'am: I cannot locate any memo on this subject and I do not recall the specifics of what may have been my discussion with Mr. Penta. What will the notification consist of? Will this notification be sent to all abutters or only those interested (and how do the abutters become "interested")? Notification to abutter(s) is an issue that an IP would take care of. It seems like you are heading in that direction. It is hard to understand how the PGP is quick and easy when its procedures mirror that of an IP. Since you are asserting the right to notify abutters, you may want to consider also modifying the condition to obtaining the names and mailing addresses of abutters from applicants. G.P.

-----Original Message-----

**From:** Gaudet, Jody A NAE  
**Sent:** Friday, September 17, 1999 1:26 PM  
**To:** Pasternak, Gary A NAE  
**Subject:** FW: MAPGP applications and abutter notification

Gary,

Just a tickler. I haven't gotten a response to this message yet.

Jody

-----Original Message-----

**From:** Gaudet, Jody A NAE  
**Sent:** Wednesday, September 01, 1999 1:49 PM  
**To:** Pasternak, Gary A NAE  
**Subject:** MAPGP applications and abutter notification

Gary,

I am working on modifying and reissuing the Massachusetts Programmatic General Permit. Greg Penta told me that you suggested that some language regarding the Corps right to notify abutters be included in the MAPGP. The following is what I have to be included as a general condition:

The Corps has the right to notify abutters and/or local and state officials regarding any application under the PGP.

Please let me know if/how you think this should be reworded.

Thanks,  
Jody

## Gaudet, Jody A NAE

---

**From:** Godfrey, Christine A NAE  
**Sent:** Monday, September 20, 1999 11:45 AM  
**To:** Gaudet, Jody A NAE; Adams, Karen K NAE; Penta, Gregory R NAE; Pasternak, Gary A NAE; Godfrey, Christine A NAE  
**Subject:** RE: MAPGP applications and abutter notification

When we are proposing to issue/reissue the PGP, we send the public notice to every Town in the state, since it would be impossible to notify every potential abutter (maybe everyone in the state?). After the PGP is issued, and subsequent authorizations are made, there is no requirement to notify abutters. However, there is no prohibition either. My suggestion is, if a PM feels comments from abutters would be helpful, he/she can seek them out. It remains unclear to me why we have to specifically state this in the PGP. Gary, if I am missing something, please advise. Thanks, Chris

-----Original Message-----

**From:** Gaudet, Jody A NAE  
**Sent:** Monday, September 20, 1999 11:36 AM  
**To:** Adams, Karen K NAE; Godfrey, Christine A NAE; Penta, Gregory R NAE  
**Subject:** FW: MAPGP applications and abutter notification

Any comments or suggestions?

Thanks,  
Jody

-----Original Message-----

**From:** Pasternak, Gary A NAE  
**Sent:** Monday, September 20, 1999 11:29 AM  
**To:** Gaudet, Jody A NAE  
**Subject:** RE: MAPGP applications and abutter notification

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**To:** Pasternak, Gary A NAE  
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**Sent:** Wednesday, September 01, 1999 1:49 PM  
**To:** Pasternak, Gary A NAE  
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Please let me know if/how you think this should be reworded.

Thanks,  
Jody

## Gaudet, Jody A NAE

---

**From:** Adams, Karen K NAE  
**Sent:** Monday, September 20, 1999 12:18 PM  
**To:** Gaudet, Jody A NAE; Godfrey, Christine A NAE; Penta, Gregory R NAE; Pasternak, Gary A NAE  
**Subject:** RE: MAPGP applications and abuttor notification

We had a situation where I was concerned that the applicants could object to us talking to or asking the abuttor if they had any comments. We do have retaining walls proposed that may be tying into an abuttor's wall. We may need information on it. I would like the PGP to be explicit that we do have the right to seek information or comment from the abuttor. Its only come up once or twice that the project appears to be minor but we want to check in with the neighbor either to verify information or our perception of the project. A call to the neighbor may save us a field trip. If its not that simple, an IP is appropriate.

-----Original Message-----

**From:** Gaudet, Jody A NAE  
**Sent:** Monday, September 20, 1999 11:36 AM  
**To:** Adams, Karen K NAE; Godfrey, Christine A NAE; Penta, Gregory R NAE  
**Subject:** FW: MAPGP applications and abuttor notification

Any comments or suggestions?

Thanks,  
Jody

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**To:** Gaudet, Jody A NAE  
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**Subject:** FW: MAPGP applications and abuttor notification

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Thanks,  
Jody



US Army Corps  
of Engineers  
New England District

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ODISC4

COMMAND/ OFFICE		NAME/ OFFICE SYMBOL	OFFICE TELEPHONE NO. (AUTOVON/Comm.).		FAX NO. (AUTOVON/Comm.).	
FROM:						
Jody Gauchet		CENAE-COR	(478) 318-8860		(478) 318-8303	
TO:						
Lois Bruinoooge		DEP			(508) 792-7621	
CLASSIFICATION	PRECEDENCE	NO. PAGES (including this Header)	DATE-TIME	MONTH	YEAR	RELEASER'S SIGNATURE
		3	2:00pm 9/17/99			Jody Gauchet

REMARKS proposed MAPG-P  
for your review

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## DEFINITION OF CATEGORIES

	CATEGORY I	CATEGORY II	INDIVIDUAL PERMIT
<b>A. INLAND WATERS AND WETLANDS (WATERS OF THE U.S.<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.</p> <p>* In-stream work limited to July 15-October 1.</p> <p>* This category excludes dams, dikes, or activities involving water diversions 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>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>* Any dam, dike, or activity involving water diversions or water withdrawals</p> <p>* Time-of-year restriction to be determined case-by-case.</p> <p>Any amount of fill associated with proactive wetland restoration where the Corps determines, in consultation with State and Federal agencies, that net adverse effects are not more than minimal.</p>	<p>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, 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 15-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>

	<p>Fish and wildlife harvesting structures and fill.</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>	<p>guidelines.</p>	
--	--	--------------------	--

<sup>1</sup> **Waters of the U.S. in inland areas:** Non-navigable rivers, streams, lakes, ponds and wetlands.

<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:** Include waters and depressional wetlands that are designated as habitat for State-listed species and waters and depressional wetlands for which evidence of obligate or facultative vernal pool indicator species has been documented. Obligate vernal pool indicator species include mole salamanders, wood frogs, and fairy shrimp. Facultative vernal pool indicator species include spring peepers, American toads, gray tree frogs, Fowler's toads, four-toed salamanders, red-spotted newts, and fingernail clams.

<sup>4</sup> **Navigable Waters:** 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).

<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 (up to 4' wide) over the substrate of the special aquatic site.

TELEPHONE CONVERSATION RECORD		DATE
SUBJECT OF CONVERSATION		FILE NUMBER
MAP 6 P REISSUANCE		199QB 470
PERSON CALLING	OFFICE	PHONE NUMBER AND EXTENSION
Lois Bruneau	DEP	(508) 167-2819
PERSON CALLED	ADDRESS	PHONE NUMBER AND EXTENSION
Jody Gaudet	(EMAE-CO-R)	(478) 318-8800

SUMMARY OF CONVERSATION

Lois was returning my call. She said that she received the revised flowchart that I faxed her. She said that DEP ~~is~~ agrees with the proposed procedures in that flowchart. I asked Lois the status of the WQC. She said that they are prepared to issue with similar conditions as in the current DEP they would just like to review a more final draft than went out to public notice. I told Lois that the biggest change that came out of the public notice comments was the exclusion of vernal pools from Category I. I told Lois the current language that we are looking at for the exclusion. She asked me to send her that so she could have some of her people review it. I told Lois that I would fax it to her. I told her that I would send her a



US Army Corps  
of Engineers  
New England District

**FACSIMILE TRANSMITTAL HEADER SHEET**

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ODISC4

COMMAND/ OFFICE		NAME/ OFFICE SYMBOL	OFFICE TELEPHONE NO. (AUTOVON/Comm.)		FAX NO. (AUTOVON/Comm.)	
FROM:						
Jody Gaudet		(CNAE-0-R	(478) 318-8860		(478) 318-5303	
TO:						
Jane Mead		(ZM	(617) 626-1216		(617) 626-1246	
CLASSIFICATION	PRECEDENCE	NO. PAGES (including this Header)	DATE-TIME	MONTH	YEAR	RELEASER'S SIGNATURE
		3	9/17/99 1:00 pm			Jody Gaudet

REMARKS Proposed MAP & P  
FOR YOUR REVIEW

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RECEIVED  
 SEP - 8 1999  
 REGULATORY DIVISION

To: Christine Godfrey, ACOE  
 Karen Kirk Adams, ACOE  
 From: Jane W. Mead, MCZM  
 Date: August 26, 1999  
 Re: Proposed Modifications; Massachusetts Programmatic General Permit

*JMM* 10/21/99

The following are summaries of the modifications to the Massachusetts Programmatic General Permit (PGP) proposed by MCZM and some suggested language to be included in the revised permit:

OK

Stormwater: MCZM recommends inclusion of the Massachusetts Stormwater Management Policy as described in "Stormwater Management, Volume One: Stormwater Policy Handbook", March 1997, *et seq.*, in Condition 19. Discharge of Pollutants.

Coastal Bank Stabilization: MCZM recommends that a new category, Coastal Bank Stabilization, be developed to address a complex group of projects that may be described under that heading. As indicated in our discussions, the current PGP Category I language encourages people to rebuild coastal bank stabilization structures that may have been poorly designed. The state is trying to encourage people who rebuild to consider modifying the design of existing structures to make them less damaging. As an example, a riprap slope would disappate wave energy better than a seawall and therefore increases the stability of sediments in front of the structure.

The following language was drafted based on the MEPA thresholds, DEP's policies, and language in the Corps PGP already. Note that the universe of projects this will trigger only includes those below the annual high tide line, which is a limited group.

Coastal Bank Stabilization:

Category I: Repair or maintenance of existing, currently functioning, authorized coastal bank stabilization, with plans approved by local Conservation Commission or the MA Department of Environmental Protection to monitor impacts of the structure(s) on adjacent resources.

Category II: Reconstruction, replacement or any expansion of coastal bank stabilization; or new coastal bank stabilization projects:

- designed to minimize impacts to adjacent resources;
- include monitoring and mitigation plans for any impacts to adjacent resources.

general condition 14 ←  
 can be ←  
 included as a special condition on a case-by-case basis

DRAFT

	<b>CATEGORY I</b>	<b>CATEGORY II</b>	<b>INDIVIDUAL PERMIT</b>
<b>B. TIDAL or 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 proactive wetland restoration. Fill may be in any amount but net adverse effects must not be more than minimal, as determined by the Corps in consultation with State and Federal agencies.</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, including bank stabilization projects 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, including bank stabilization projects, 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, including bank stabilization projects, 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>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>* See (a) above for limitations on fill for beach nourishment.</p>	<p>Maintenance dredging and 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 harbormaster.</p>	<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</p>



US Army Corps  
of Engineers  
New England District

**FACSIMILE TRANSMITTAL HEADER SHEET**

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ODISCA

COMMAND/ OFFICE	NAME/ OFFICE SYMBOL	OFFICE TELEPHONE NO. (AUTOVON/Comm.)	FAX NO. (AUTOVON/Comm.)			
FROM: Jody Gaudet	CENAE-LO-R	(978)318-8860	(978)318-8303			
TO: Doug Harris	Narragansett Indian Tribal Historic Preservation Office	(401)539-1190	(401)539-4217			
CLASSIFICATION	PRECEDENCE	NO. PAGES (Including this Header) 3	DATE-TIME 1:30 pm 9/7/99	MONTH	YEAR	RELEASER'S SIGNATURE Jody Gaudet

REMARKS Doug,  
Here are the sections of the MAP&P that relate  
to historic preservation. Please call with any comments or  
questions.  
Thanks, Jody

Space Below For Communications Center Use Only

**DRAFT**

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. 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.

6. The Corps has the right to notify abutters and/or local or state officials regarding any permit application under the PGP.

**NATIONAL CONCERNS:**

7. 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 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.

8. 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.

**DRAFT**

**Contacts for Programmatic General Permit:**

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)

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

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:**

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

**September 1999**

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

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

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

**Massachusetts Department of Environmental Protection (DEP):**

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

## Gaudet, Jody A NAE

---

**From:** Sheehan, Michael J NAE  
**Sent:** Friday, September 03, 1999 2:02 PM  
**To:** 'Eric Hutchins'; Sheehan, Michael J NAE; Gaudet, Jody A NAE  
**Cc:** Adams, Karen K NAE; philip\_morrison@fws.gov  
**Subject:** RE: C:\WINNT\Profiles\le6corms9\Desktop\Recommend.doc

Eric's recommendation has good logic. Not to be out-dooded, consider the following twist of words, ..., anchor chains and attached vessels shall not drag on the bottom during predicted lowest water.

-----Original Message-----

**From:** Eric Hutchins [mailto:Eric.Hutchins@noaa.gov]  
**Sent:** Friday, September 03, 1999 12:12 PM  
**To:** Michael.J.Sheehan@nae02.usace.army.mil; Jody.A.Gaudet@nae02.usace.army.mil  
**Cc:** Karen.K.Adams@nae02.usace.army.mil; philip\_morrison@fws.gov  
**Subject:** Re:C:\WINNT\Profiles\le6corms9\Desktop\Recommend.doc

<< File: Recommen.doc >>  
Mike,

I am very supportive of the language pertaining to the Inland fill, but only partially supportive of the language pertaining to Moorings. My concern involves the actual vessel bottom hitting the bottom. ie I want to think about whether or not to support mooring at all in vegetated shallows under the PGP I, and if so I would suggest the wording to read .... In vegetated shallows (5), anchor chains and attached vessels must be suspended above the bottom during the predicted lowest water.

Reply Separator

**Subject:** C:\WINNT\Profiles\le6corms9\Desktop\Recommend.doc  
**Author:** Michael.J.Sheehan@nae02.usace.army.mil  
**Date:** 09/03/1999 11:11 AM

Apparently, we're not all blessed with service pack 5, so I'm re-sending the earlier message as an attachment in it's word format - visually, it may be less confusing in its intended format.

--mike

C:\WINNT\Profiles\le6corms9\Desktop\Recommend.doc

## Gaudet, Jody A NAE

---

**From:** Eric Hutchins [Eric.Hutchins@noaa.gov]  
**Sent:** Friday, September 03, 1999 12:12 PM  
**To:** Michael.J.Sheehan@nae02.usace.army.mil; Jody.A.Gaudet@nae02.usace.army.mil  
**Cc:** Karen.K.Adams@nae02.usace.army.mil; philip\_morrison@fws.gov  
**Subject:** Re:C:\WINNT\Profiles\ef6corms9\Desktop\Recommend.doc



Recommen.doc

Mike,

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### Reply Separator

---

**Subject:** C:\WINNT\Profiles\ef6corms9\Desktop\Recommend.doc  
**Author:** Michael.J.Sheehan@nae02.usace.army.mil  
**Date:** 09/03/1999 11:11 AM

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--mike

C:\WINNT\Profiles\ef6corms9\Desktop\Recommend.doc

## Gaudet, Jody A NAE

---

**From:** Sheehan, Michael J NAE  
**Sent:** Friday, September 03, 1999 11:10 AM  
**To:** Gaudet, Jody A NAE  
**Cc:** Adams, Karen K NAE; Eric Hutchins (E-mail); 'Phil Morrison'  
**Subject:** C:\WINNT\Profiles\le6corms9\Desktop\Recommend.doc

Apparently, we're not all blessed with service pack 5, so I'm re-sending the earlier message as an attachment in it's word format - visually, it may be less confusing in its intended format.

--mike



Recommend.doc

C:\WINNT\Profiles\le6corms9\Desktop\Recommend.doc

The following are offered for your consideration for the Category Definitions in the new document:

There have been some recent inconsistencies in the application of the criteria related to the water diversions and withdrawals. The following recommendation is intended to capture situations where diversions and withdrawals are merely ancillary and not the primary purpose of the fill.

	CATEGORY I	CATEGORY II
<b>A. INLAND WATERS AND WETLANDS -- Waters of U.S. (1)</b>		
(a) New Fill/Excavation Discharges:	-- This category excludes dams, dikes, <del>water diversions, water withdrawals</del> or activities involving water diversions or water withdrawals (e.g. fish ladders, siphon pumps, etc.)	-- Any dam, dike, <del>water diversion or water withdrawal project</del> or activities involving water diversions or water withdrawals.

The use of the term "private" has led to confusion regarding its antonym. In the parlance of the harbor masters, "private" is synonymous with "non-commercial." The additional language relating to vegetated shallows is offered to minimize the significant losses accrued during bottom-lashing of submerged aquatic vegetation beds. This happens when ground tackle employs lighter weight anchors designed to be used with a heavy bottom chain to gain hold in the substrate. To eliminate this lashing in SAV beds, low impact designs have employed helical anchors, heavy blocks or dor-mor™ -type anchors, a reduced-scope chain and/or auxiliary buoyant devices to keep the catenary of chain from laying on the bottom during low waters.

	CATEGORY I	CATEGORY II
<b>B. TIDAL or NAVIGABLE WATERS (2)</b>		
(d) Moorings:	-- <del>Private</del> , Non-commercial, non-rental single boat moorings not associated with any boating facility (4), authorized by the local harbor master provided it is not located in a Federal navigation project other than a Federal Anchorage. In vegetated shallows (5), anchor chains must be suspended above the bottom during the predicted lowest water.	-- Moorings that do not meet the terms in Cat.I

## Gaudet, Jody A NAE

---

**From:** Sheehan, Michael J NAE  
**Sent:** Friday, September 03, 1999 10:45 AM  
**To:** Gaudet, Jody A NAE  
**Cc:** Adams, Karen K NAE; Eric Hutchins (E-mail)  
**Subject:** MA PGP

The following are offered for your consideration for the Category Definitions in the new document:

There have been some recent inconsistencies in the application of the criteria related to the water diversions and withdrawals. The following recommendation is intended to capture situations where diversions and withdrawals are merely ancillary and not the primary purpose of the fill.

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### CATEGORY II

#### A. INLAND WATERS AND WETLANDS -- Waters of U.S. (1)

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### CATEGORY I

### CATEGORY II

#### B. TIDAL or NAVIGABLE WATERS (2)

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-- ~~Private,~~ Non-commercial, non-rental single boat moorings not associated with any boating facility (4), authorized by the local harbor master provided it is not located in a Federal navigation project other than a Federal Anchorage. In vegetated shallows (5), anchor chains must be suspended above the bottom during the predicted lowest water.  
-- Moorings that do not meet the terms in Cat.I

## Gaudet, Jody A NAE

---

**From:** ED REINER (REINER.ED@epamail.epa.gov)  
**Sent:** Friday, September 03, 1999 7:55 AM  
**To:** Christine.A.Godfrey@USACE.Army.mil; Jody.A.Gaudet@USACE.Army.mil  
**Cc:** BENNETT.KYLA@epamail.epa.gov; SCHWEISBERG.MATT@epamail.epa.gov  
**Subject:** Vernal pool language for MA PGP revision

Ineligible for Category 1: (1) Work in any depressional wetland or other water, whether that wetland or other water falls under the jurisdiction of federal or state law or both, for which evidence of obligate or facultative vernal pool indicator species has been documented. Obligate vernal pool indicator species include the mole salamanders; wood frogs; and fairy shrimp. Facultative vernal pool indicator species include spring peepers; American toads; gray tree frogs; Fowler's toads; four-toed salamanders; red-spotted newts; and fingernail clams (?). (2) Work in any wetland or other water that falls under the jurisdiction of federal or state law or both, that is designated habitat for state-listed species.



**THE COMMONWEALTH OF MASSACHUSETTS**  
EXECUTIVE OFFICE OF ENVIRONMENTAL AFFAIRS  
OFFICE OF COASTAL ZONE MANAGEMENT  
100 CAMBRIDGE STREET, BOSTON, MA 02202  
(617) 626-1200 FAX: (617) 626-1240

To: Christine Godfrey, ACOE  
Karen Kirk Adams, ACOE  
From: Jane W. Mead, MCZM  
Date: August 26, 1999  
Re: Proposed Modifications; Massachusetts Programmatic General Permit

The following are summaries of the modifications to the Massachusetts Programmatic General Permit (PGP) proposed by MCZM and some suggested language to be included in the revised permit:

Stormwater: MCZM recommends inclusion of the Massachusetts Stormwater Management Policy as described in "Stormwater Management, Volume One: Stormwater Policy Handbook", March 1997, *et seq.*, in Condition 19. Discharge of Pollutants.

Coastal Bank Stabilization: MCZM recommends that a new category, Coastal Bank Stabilization, be developed to address a complex group of projects that may be described under that heading. As indicated in our discussions, the current PGP Category I language encourages people to rebuild coastal bank stabilization structures that may have been poorly designed. The state is trying to encourage people who rebuild to consider modifying the design of existing structures to make them less damaging. As an example, a riprap slope would disappate wave energy better than a seawall and therefore increases the stability of sediments in front of the structure.

The following language was drafted based on the MEPA thresholds, DEP's policies, and language in the Corps PGP already. Note that the universe of projects this will trigger only includes those below the annual high tide line, which is a limited group.

**Coastal Bank Stabilization:**

Category I: Repair or maintenance of existing, currently functioning, authorized coastal bank stabilization, with plans approved by local Conservation Commission or the MA Department of Environmental Protection to monitor impacts of the structure(s) on adjacent resources.

Category II: Reconstruction, replacement or any expansion of coastal bank stabilization; or new coastal bank stabilization projects:

- designed to minimize impacts to adjacent resources;
- include monitoring and mitigation plans for any impacts to adjacent resources.

Individual Permit: Projects that have not been designed to minimize impacts to adjacent resources or do not include a proposal for monitoring and mitigation.

Dredging: while there is no proposal to increase MEPA dredging thresholds to 25,000cy, MCZM finds the language proposed under (c) Dredging, Category II acceptable as there are adequate opportunities to review dredging proposals before the federal permit is issued.

We look forward to continuing our work with the New England District of the Army Corps of Engineers to revise and implement the Massachusetts Programmatic General Permit.



US Army Corps  
of Engineers  
New England District

**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: Jody Gaudet	CENAE-CO-R	(978) 318-8860	(978) 318-8303			
TO: Kyla Bennett	EPA		(617) 918-1909			
CLASSIFICATION	PRECEDENCE	NO. PAGES (Including this Header)	DATE-TIME	MONTH	YEAR	RELEASER'S SIGNATURE
		2	9/1/99			Jody Gaudet

REMARKS Kyla, Ed Reiner asked me to fax this to you. Please review and contact Ed with your thoughts on it.

Thanks,  
Jody

Space Below For Communications Center Use Only

## Potential Vernal Pool Exclusion Language for MAPGP

Work in isolated depressional wetlands that are located in designated habitat for state-listed species and isolated depressional wetlands with evidence of mole salamanders, wood frogs, fairy shrimp...is not eligible for Category I.

Jody FYE. Chris



**THE COMMONWEALTH OF MASSACHUSETTS**  
 EXECUTIVE OFFICE OF ENVIRONMENTAL AFFAIRS  
 OFFICE OF COASTAL ZONE MANAGEMENT  
 100 CAMBRIDGE STREET, BOSTON, MA 02142  
 (617) 626-1200 FAX: (617) 626-1240

Post-it® Fax Note		7671	Date	# of pages
To	Chris Godfrey		From	Jane Mead
Co./Dept.			Co.	MCZM
Phone #			Phone	(617) 626-1214
Fax #			Fax #	

To: Christine Godfrey, ACOE  
 Karen Kirk Adams, ACOE  
 From: Jane W. Mead, MCZM  
 Date: August 26, 1999  
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Stormwater: MCZM recommends inclusion of the Massachusetts Stormwater Management Policy as described in "Stormwater Management, Volume One: Stormwater Policy Handbook", March 1997, *et seq.*, in Condition 19. Discharge of Pollutants.

Coastal Bank Stabilization: MCZM recommends that a new category, Coastal Bank Stabilization, be developed to address a complex group of projects that may be described under that heading. As indicated in our discussions, the current PGP Category I language encourages people to rebuild coastal bank stabilization structures that may have been poorly designed. The state is trying to encourage people who rebuild to consider modifying the design of existing structures to make them less damaging. As an example, a riprap slope would dissipate wave energy better than a seawall and therefore increases the stability of sediments in front of the structure.

The following language was drafted based on the MEPA thresholds, DEP's policies, and language in the Corps PGP already. Note that the universe of projects this will trigger only includes those below the annual high tide line, which is a limited group.

Coastal Bank Stabilization:

Category I: Repair or maintenance of existing, currently functioning, authorized coastal bank stabilization, with plans approved by local Conservation Commission or the MA Department of Environmental Protection to monitor impacts of the structure(s) on adjacent resources.

Category II: Reconstruction, replacement or any expansion of coastal bank stabilization; or new coastal bank stabilization projects:

- designed to minimize impacts to adjacent resources;
- include monitoring and mitigation plans for any impacts to adjacent resources.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 1

JOHN F. KENNEDY FEDERAL BUILDING  
BOSTON, MASSACHUSETTS 02203-0001

August 23, 1999

William F. Lawless, P.E.  
Chief, Regulatory Branch  
U.S. Army Corps of Engineers  
New England District  
696 Virginia Road  
Concord, MA 01742-2751

Re: Public Notice No. 199901470

Dear Mr. Lawless:

This follows up on the several recent conversations with Christine Godfrey about the proposed amendments to the Massachusetts Programmatic General Permit (PGP) with specific reference to the July 19, 1999 comment letter on the same subject. After discussing these matters with Ms. Godfrey, I now agree with the proposal to increase the dredging volume for Category II projects from 10,000 cubic yards to 25,000 cubic yards. This will leave the MA PGP consistent with those for Connecticut and Maine, each of which have the same 25,000 cubic yard limitation.

This revised position is based on several factors. There remains the opportunity to "kick-out" any specific project at joint processing meetings. Each project will still be subject to all applicable sampling and testing requirements. No operational problems have been reported under the Connecticut and Maine permits. Additionally, this proposed change mirrors one that Massachusetts plans to make to its Massachusetts Environmental Policy Act (MEPA) requirements for open water disposal of dredged material.

Please let me know if this needs to be discussed further.

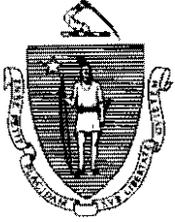
Sincerely,

A handwritten signature in black ink, appearing to read "Roger A. Janson".

Roger A. Janson, Manager  
Water Quality Unit (CWQ)

cc: Peter Colosi, NMFS  
Vern Lang, USFWS  
Deerin Babb-Brott, MACZM

TELEPHONE CONVERSATION RECORD		DATE
SUBJECT OF CONVERSATION		FILE NUMBER
Verbal Pool Comments on MA POP		199101170
PERSON CALLING	OFFICE	PHONE NUMBER AND EXTENSION
Ed Reimer	LPA	(617) 418-1692
PERSON CALLED	ADDRESS	PHONE NUMBER AND EXTENSION
Jody Gaudet	CEAAT-CO-12	(617) 318-8860
SUMMARY OF CONVERSATION		
<p>Ed was returning my call from earlier this week.</p> <p>I told Ed that we were considering excluding verbal pools from category J of the MA POP. I said that we were looking into possible language. Ed said that he would like Kyla Bennett to be in on the conversation. She was not available. Ed took notes and said that he will discuss it with her and get back to me during the week of August 30, 1999.</p> <p>I explained to Ed that I talked to Matt Burno at the NHESP and got some suggestions for language. I summarized for Ed the conversation that I had with Matt (see <del>pt 1</del> telephone conversation record from August 18, 1999).</p>		



COASTAL ZONE  
MANAGEMENT

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

August 12, 1999

Christine Godfrey  
Department of the Army  
New England District, Corps of Engineers  
696 Virginia Road  
Concord, MA 017-2751

Re: Federal Consistency Review of the Massachusetts Programmatic General Permit; Statewide

Dear Ms. Godfrey;

The Massachusetts Coastal Zone Management (MCZM) Program is currently reviewing the Massachusetts Programmatic General Permit (PGP) for consistency with its program policies. As we discussed today, there are a few outstanding procedural and substantive issues to be resolved before MCZM can complete its review.

MCZM must, by federal regulation, complete its review of a direct federal activity such as the proposed PGP within 60 days of the commencement of its review unless the federal agency and MCZM agree to extend the review beyond that time. As we believe that the outstanding matters can be resolved quickly, we are requesting that the Corps agree to a one-month extension of the current federal consistency review. Please indicate your concurrence with this request to me at the address above.

Thanks you for your attention to this matter.

Very truly yours,

Jane W. Mead  
Sr. Project Review Coordinator

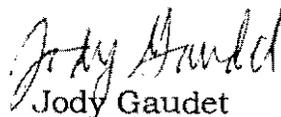
RECEIVED  
AUG 13 1999  
10:00 AM

August 18, 1999

MEMORANDUM FOR RECORD

SUBJECT: Meeting notes from August 17, 1999

1. In attendance were Chris Godfrey (Corps, PATSS), Karen Adams (Corps, Permits and Enforcement Section A), Jody Gaudet (Corps, ERU), and Jane Mead (MA CZM). The purpose of the meeting was to discuss MA CZM comments on the proposed MAPGP reissuance.
2. Jane said that MA CZM is almost ready to sign-off of the proposed MAPGP.
3. We discussed MEPA thresholds for dredging. Jane said that for new dredging the limit for not triggering MEPA review is 10,000 cy. However, routine maintenance projects can be in any amount provided they are in the existing footprint and there are no resource impacts. Open water disposal is allowed for both, without MEPA review. We asked Jane if increasing the new dredging volume allowed under Category II to 25,000 cy would cause a lengthier review on her part. She said that she did not think it would. Theoretically, applicants will not start the Corps permit process and CZM review after the MEPA review.
4. Jane said that the reason for most of her kickouts is that projects do not meet stormwater requirements. She said that she would like to see some language included as a general condition, such as "All projects must be consistent with state stormwater regulations". We said that we could include something similar to that as a general condition. Karen said that she will get the Federal stormwater conditions from EPA and compare those to the state's conditions.
5. CZM had concerns that by requiring repair and maintenance work in tidal areas to occur in the same footprint we would be discouraging technological upgrades, particularly on shoreline stabilization (coastal armoring) projects. We said that we could separate these projects similarly to how we did the inland bank stabilization projects. Jane will send Jody recommendations for language.

  
Jody Gaudet

Environmental Resources Unit

TELEPHONE CONVERSATION RECORD		DATE
SUBJECT OF CONVERSATION		FILE NUMBER
Vernal Pool Communities in MA (P)		199901470
PERSON CALLING	OFFICE	PHONE NUMBER AND EXTENSION
Joey Gruber	FNAE-WR	(978) 218-3860
PERSON CALLED	ADDRESS	PHONE NUMBER AND EXTENSION
Matt Burne	MA NIESP	(508) 742-7270 x157
SUMMARY OF CONVERSATION		
<p>I explained to Matt that I was calling in response to his comment letter on the proposed MA PGP vernal pool. I said that we are considering excluding vernal pools from Category I and we are looking at potential language. We are having difficulty with creating a definition for vernal pools that anyone can effectively use throughout the year.</p> <p>I said that we are resistant to use "isolated depressioned wetlands" because we feel that we may be removing too many small impacts that are not vernal pools. I said that we were considering something to the effect of "isolated depressioned wetlands that are designated as critical habitat for state listed rare species" since several vernal pool species are state listed rare species. Matt said that this would be better than the way it is now but it may not include all vernal pools and would not be scientifically defensible. He said that it would be most inclusive as "isolated depressioned wetlands". I asked Matt what percent of isolated depressioned wetlands he thought are vernal pools. He said that most are vernal pools. He said that the smaller ones that could not support the hydroperiod for vernal pool species probably would not be vernal pools. I asked Matt approximately what size he was talking about he said approximately 25' diameter and smaller. (~ 2500 sq. ft.)</p> <p>Matt suggested that we also exclude "all vernal pools designated by the Natural Heritage Program". He said that</p>		

more final version of the entire PGP  
once I resolve a few more things  
I told her that right now I plan to  
have the PGP revised by the first  
or second week of October.

this would include all certified vernal pools and all those designated by aerial photography reviews. He said that they have been using aerial photo interpretation for identifying vernal pools and have found more than 80% accuracy. They have only started this in Plymouth and Bristol Counties, though. I told Matt that we would consider that.

I thanked Matt for his help. Matt appreciated that we were considering their recommendations.



US Army Corps  
of Engineers \*  
New England District

696 Virginia Road  
Concord, MA 01742-2751

# PUBLIC NOTICE

Date: August, 17, 1999

Comment Period Ends: September 17, 1999

File Number: 199901470

In Reply Refer To: Ms. Christine Godfrey 978-318-8338

## PROPOSAL TO REVOKE NATIONWIDE PERMITS IN MASSACHUSETTS

**The New England District, U.S. Army Corps of Engineers, 696 Virginia Road, Concord, MA 01742-2751** is proposing to the North Atlantic Division to revoke the current Nationwide Permits (NWP) in Massachusetts pursuant to 33 CFR 330.5. This action would occur concurrent with the reissuance of the Massachusetts Programmatic General Permit (MAPGP) for which a public notice was issued on June 8, 1999 and closed on July 8, 1999. The MAPGP would continue to substitute the Nationwide permits with a broad-based, highly successful programmatic general permit program. Revocation of the NWP in Massachusetts with continued replacement by the MAPGP will continue to offer important benefits to the public including simplifying and streamlining the permit process, expediting decisions, and providing environmental protection.

In order to properly evaluate the proposal, we are seeking public comment. Anyone wishing to comment is encouraged to do so. Comments should be submitted in writing by the above date. If you have any questions, please contact Ms. Christine Godfrey at (978) 318-8338 or use our toll free number (800) 343-4789 or (800) 362-4367 if calling from within Massachusetts.

Any person may request, in writing, within the comment period specified in this notice, that a public hearing be held to consider the application. Requests for a public hearing shall specifically state the reasons for holding a public hearing. The Corps holds public hearings for the purpose of obtaining public comments, when that is the best means for understanding a wide variety of concerns from a diverse segment of the public.

SEE NEXT PAGE FOR  
DETAILS OF EVALUATION  
FACTORS

  
for William F. Lawless, P.E.  
Chief, Regulatory Branch  
Construction/Operations 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 value, fish and wildlife values, flood hazards, flood plain value, land use, navigation, 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 Section 106 of the National Historic Preservation Act of 1966, as amended, is necessary. This determination is based upon 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 listed as being eligible for inclusion therein are in the permit area or general vicinity.

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 State.
- ( ) Permit from Local Wetland Agency or Conservation Commission.
- ( ) 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. By this Public Notice, we are requesting the State concurrence or objection to the applicant's consistency statement.

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 District, ATTN: Regulatory Branch, 696 Virginia Road, Concord, MA 01742-2751.

NAME: \_\_\_\_\_  
ADDRESS: \_\_\_\_\_



US Army Corps  
of Engineers  
New England District

**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: Jody Gaudet		CENAE-CO-K	(978) 318 8860			(978) 318-8303
TO: Lois Bruinooge		DEP - Division of Wetlands and Waterways	(508) 767-2814			(508) 792 7621
CLASSIFICATION	PRECEDENCE	NO. PAGES (Including this Header) 2	DATE-TIME 8/17/99 10:30am	MONTH	YEAR	RELEASER'S SIGNATURE Jody Gaudet

REMARKS Revised flow chart

Space Below For Communications Center Use Only

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DA FORM 3918-R, AUG 72 IS  
OBSOLETE

USAPPC V2.10

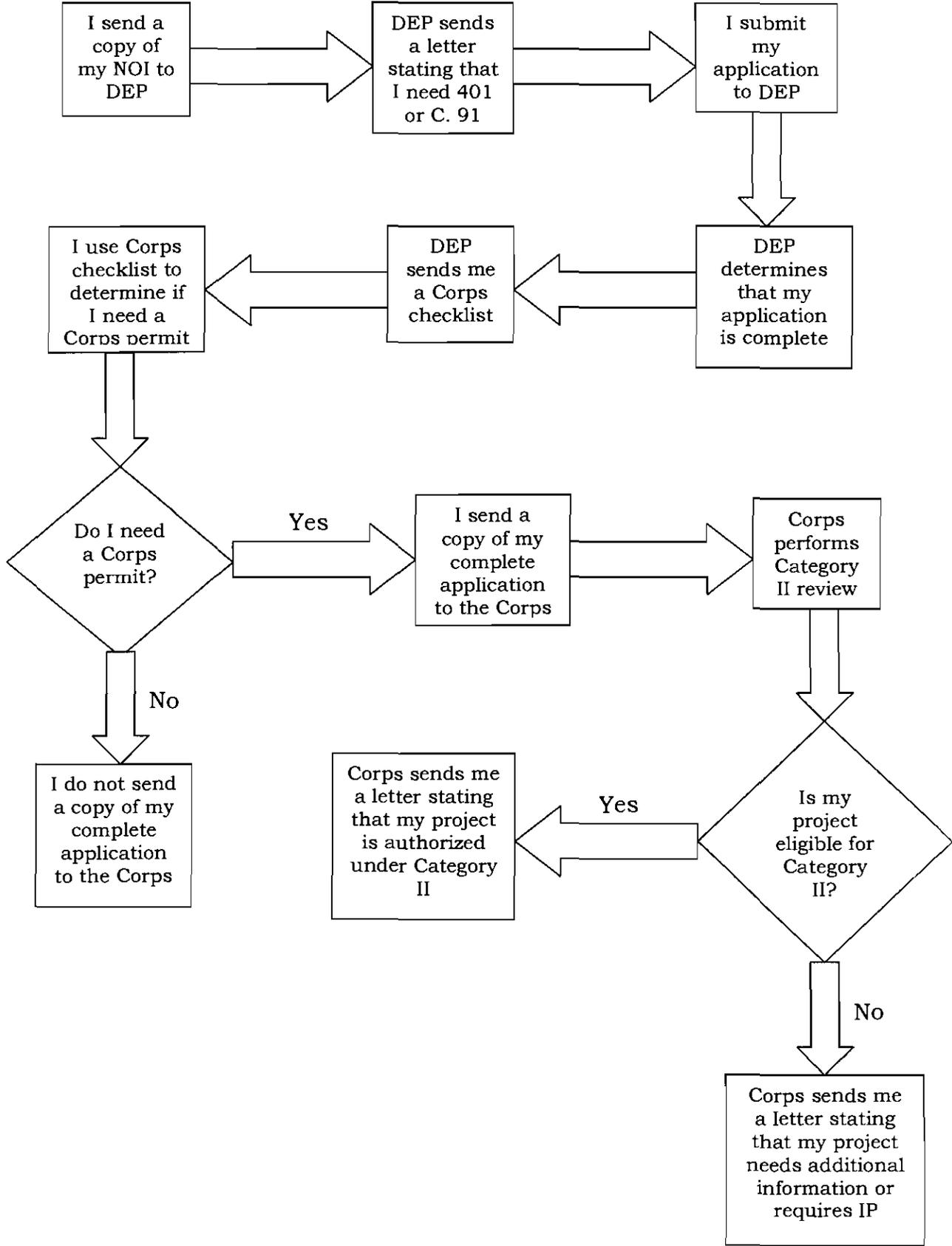
Lois,

Please call me so we can discuss  
this. I will be leaving around 11:00  
for the day. I should be in the office  
for the rest of the week.

Thanks,

Jody

**Proposed Corps Application Procedures Under MAPGP  
(Revised 8/17/99)**



TELEPHONE CONVERSATION RECORD		DATE August 17, 1999
SUBJECT OF CONVERSATION Vernal Pool exclusion from cat. A of VT GP		FILE NUMBER 199901470
PERSON CALLING Marty Abair	OFFICE VT Field Office	PHONE NUMBER AND EXTENSION
PERSON CALLED Jody Gaudet	ADDRESS CENAE-CO-R	PHONE NUMBER AND EXTENSION (978) 318-8860
SUMMARY OF CONVERSATION		
<p>Marty was returning my call. I explained to Marty that we were considering excluding Vernal pools from Category I of the MA P&amp;P, as they did from Category A of the VT GP.</p> <p>I asked Marty for her opinion on how this was working in Vermont. She said that she hasn't really seen any change. It hasn't really come up. She pointed out though that the Category A threshold is 3,000 s.f. whereas the MA P&amp;P Category I threshold is 5,000 s.f. Marty added that when she gives presentations on the GP she points out that Vernal pools <del>are</del> and other "special wetlands" are excluded from Category A.</p>		



**DEPARTMENT OF THE ARMY**  
NEW ENGLAND DISTRICT, CORPS OF ENGINEERS  
696 VIRGINIA ROAD  
CONCORD, MASSACHUSETTS 01742-2751

REPLY TO  
ATTENTION OF

August 12, 1999

Regulatory Branch  
CENAE-CO-R-199901470

Ms. Susan Snow-Cotter  
Acting Assistant Director  
Massachusetts Coastal Zone Management  
100 Cambridge Street, 20<sup>th</sup> floor  
Boston, Massachusetts 02202

Dear Ms. Snow-Cotter:

We have received your request for a time extension for Massachusetts Coastal Zone Management federal consistency review of the proposed reissuance of the Massachusetts Programmatic General Permit. We acknowledge this request and extend your review period until September 15, 1999.

Sincerely,

William F. Lawless, P.E.  
Chief, Regulatory Branch  
Construction/Operations Division

*WFL*  
PM

*WFL*  
PAIS Ch.

*WFL*  
Br. Ch.



US Army Corps  
of Engineers  
New England District

**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: Jody Gaudet	CENAE-CO-R	(979) 318-8860	(978) 318-8303			
TO: Jane Mead	MA CEM		(617) 723-5408			
CLASSIFICATION	PRECEDENCE	NO. PAGES (Including this Header)	DATE-TIME	MONTH	YEAR	RELEASER'S SIGNATURE
		2				Jody Gaudet

REMARKS Time extension.  
We'll see you on Tuesday.

Space Below For Communications Center Use Only



COASTAL ZONE  
MANAGEMENT

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

August 12, 1999

Christine Godfrey  
Department of the Army  
New England District, Corps of Engineers  
696 Virginia Road  
Concord, MA 017-2751

Re: Federal Consistency Review of the Massachusetts Programmatic General Permit; Statewide

Dear Ms. Godfrey;

The Massachusetts Coastal Zone Management (MCZM) Program is currently reviewing the Massachusetts Programmatic General Permit (PGP) for consistency with its program policies. As we discussed today, there are few outstanding procedural and substantive issues to be resolved before MCZM can complete its review.

MCZM must, by federal regulation, complete its review of a direct federal activity such as the proposed PGP within 60 days of the commencement of its review unless the federal agency and MCZM agree to extend the review beyond that time. As we believe that the outstanding matters can be resolved quickly, we are requesting that the Corps agree to a one-month extension of the current federal consistency review. Please indicate your concurrence with this request to me at the address above.

Thanks you for your attention to this matter.

Very truly yours,

A handwritten signature in cursive script that reads "Jane W. Mead".

Jane W. Mead  
Sr. Project Review Coordinator

# Town of Pepperell

TOWN HALL

PEPPERELL, MASSACHUSETTS

01463

CONSERVATION COMMISSION

August 5, 1999

*cg*  
Ms. Christine Godfrey  
U.S. Army Corps of Engineers  
Regulatory Branch  
696 Virginia Road  
Concord, MA 01742-2851

Dear Ms. Godfrey:

Thank you for the opportunity to provide comments on the proposed Programmatic General Permit. I am concerned that the process as it now stands has a loophole that allows the incremental filling of small isolated wetlands without requiring any compensatory storage. The potential for cumulative impacts to both waterways and roadways is immense. In fact most communities are now paying for just such historic filling over time with increased stormwater management costs. Presently, the 401 Water Quality Certification process under the Massachusetts Department of Environmental Protection requires simply that an application be made. There is no follow through or enforcement authority once these certifications are issued. In fact, unless the 401 is tracked carefully in the local community, the regional DEP offices are often unaware of violations. If there is a subdivision for which a deed restriction limiting the filling to less than 5,000 square feet has been created, there is no requirement for mitigation. This potentially poses difficulty for abutters whose land is flooded or towns whose roadways are flooded as the cumulative result of incremental filling. The sizing and depth of isolated lands subject to flooding are the criteria Massachusetts uses to determine jurisdiction. Filling these depressions still results in increased flooding elsewhere and should be mitigated by providing compensatory storage.

While streamlining is an admirable goal, please do not dismiss the potential impacts of small projects. Pepperell is a small community, and I am aware of two projects in town that did not have Orders of Conditions because there were Federal, not state wetlands, on the properties. Homeowners and town officials ignore these areas at their peril, and such situations are ripe for civil action. I urge you to incorporate both a monitoring and enforcement mechanism into the PGP process particularly as it relates to isolated wetlands. Thank you for considering my comments.

Sincerely yours,

*Barbara V. Ganeri*  
Barbara V. Ganeri  
Conservation Administrator

RECEIVED  
AUG 11 1999  
FROST



UNITED STATES DEPARTMENT OF COMMERCE  
National Oceanic and Atmospheric Administration  
NATIONAL MARINE FISHERIES SERVICE  
NORTHEAST REGION  
One Blackburn Drive  
Gloucester, MA 01930

JUL 23 1999

William F. Lawless  
Chief, Regulatory Branch  
U.S. Army Corps of Engineers  
696 Virginia Road  
Concord, MA 01742-2751

**RE: Re-issuance of Massachusetts Programmatic General Permit (#99-1470)**

Dear Mr. Lawless:

This is in reference to the Army Corps of Engineers (ACOE) proposal to revise and reissue the Massachusetts Programmatic General Permit (PGP) for minimal impact projects in Massachusetts, as described in the Public Notice dated June 8, 1999. The PGP would cover a wide variety of activities which fall within ACOE jurisdiction under Section 10 of the Rivers and Harbors Act of 1899, Section 404 of the Clean Water Act, and Section 103 of the Marine Protection and Sanctuaries Act. The National Marine Fisheries Service (NMFS) supports the continued use of the PGP in Massachusetts because it offers the opportunity to provide a streamlined state and federal regulatory process for projects that are expected to result in no more than minimal individual or cumulative impacts.

The PGP should not be a static regulatory instrument and we support periodic public and interagency review of the existing program to ensure that the public is appropriately served and that the aquatic environment is adequately protected. However, we are concerned about a variety of the proposed and existing aspects of the PGP that would permit and even facilitate projects with greater than minimal individual and cumulative adverse impacts. We recommend that you do not issue this permit as it is currently written. Please consider the following specific comments and recommendations on the proposed modifications, as well as other aspects of the PGP.

**General Comments**

**(a) Fill in Tidal and Navigable Waters.** The proposed PGP would allow for up to one acre of temporary waterway fill an/or secondary waterway and wetland impacts permissible as a Category II activity. Other than reference to "discharges associated with mechanized land clearing", the ACOE is not proposing any changes to the Category II thresholds for temporary fill impacts. Our concern focuses on the continued use of the PGP threshold allowing an applicant to temporarily fill up to one acre of submerged aquatic vegetation (SAV). Due to the ecological importance and difficulties associated with mitigating for SAV impacts, NMFS regards any impact as greater than minimal and we recommend that any temporary impacts to SAV beds require an Individual Permit.



**(b) Moorings.** We recommend changing the description of Category I moorings in the Definition of Categories table to as follows:

*“Private, non-commercial, non-rental, single boat moorings, not associated with any boating facility (4), and not positioned over vegetated shallows (5).”*

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 (*Zostera marina*) and widgeon grass (*Ruppia marina*) beds.

**(c) Pile-Supported Structures and Floats.** NMFS recognizes and supports the efforts by the ACOE to streamline the permitting process for reviewing pile supported structures. We are optimistic that the proposed PGP language requiring maximum structure size and minimum height above tidal wetlands will adequately forego the need to review every pier, ramp and float project. The proposed language provides both applicants and consultants the regulatory incentive to design and construct low impact structures. However, it is our opinion that there are a variety of instances under the proposed language where non-reporting projects (Category I) would result in impacts that would be more than minimal. We strongly recommend that you modify the proposed Category I thresholds to incorporate the following:

\*Decrease the maximum pile-supported pier size from 1,000 sf to 400 sf for projects with any portion of the structure constructed over intertidal wetlands. A 1,000 sf pier would range between 250 and 333 feet long depending on the proposed width. Piers of this magnitude are not commonly built in Massachusetts and from our experience with reviewing large structures, there are often realignment alternatives available which minimize direct and indirect salt marsh impacts.

\*Change to the description of Category I piers and floats by adding the words *“provided that the structure and/or vessel is not positioned over or within 50 feet of submerged aquatic vegetation”*. Piers and floats located adjacent to (but not necessarily over) eelgrass and widgeon grass beds often lead to indirect resource impacts due to boating activity and shading.

### **Essential Fish Habitat (EFH) Conservation Recommendations**

**(a) EFH Assessment.** As currently implemented, reissuance of the PGP will affect the review process of literally thousands of projects in Massachusetts during its five years of re-issuance. Many Category II projects have the potential to adversely impact EFH and NMFS will continue to review individual projects as they arise. However, re-issuance of the PGP will necessitate a direct and cumulative impact assessment of the overall permitting program. We understand that the ACOE has been undertaking a cumulative impacts assessment of the existing PGP, but the final results of that report will not be available until after closure of this Public Notice comment period. Therefore, we do not have adequate information necessary to provide our final EFH conservation recommendations. Our general comments outlined above and specific comments below highlight some of our

concerns about adverse impacts to EFH. We will provide our final EFH recommendations pending completion of the EFH impact assessment.

**(b) Section C. Corps Authorization: Category II Information Requirements.** Similar to the requirements for a wetland delineation and calculations of wetland impact areas, we recommend that an additional line be added which specifies to an applicant that site specific information regarding impacts to EFH may be required for screening purposes. We suggest adding the following bullet: (k) “*describe and identify potential impacts to essential fish habitat.*”

**(c) Section E. PGP Conditions, National Concerns Sub-Section 9.** The National Concerns section regarding EFH should be modified to provide users of the PGP with more than just a brief reference to this Federal consultation process. We recommend the following language:

*“Essential Fish Habitat. As part of the PGP screening process, the Army Corps of Engineers will coordinate with the National Marine Fisheries Service in accordance with the 1996 amendments to the Magnuson-Stevens Fishery and Conservation Management Act (MSFCMA) to protect and conserve the habitat of marine, estuarine and anadromous finfish, mollusks, and crustaceans. This habitat is termed “essential fish habitat”, and is broadly defined to include “those water 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. Information on the location of EFH can be obtained from the National Marine Fisheries Service (address listed on page 12).”*

**(d) Fresh Water Fill Impacts to Atlantic Salmon EFH.** We recommend that the PGP Category I language be specifically modified to provide no provisions for new or previously unauthorized fill in inland waters and wetlands which have been designated as Atlantic salmon (*Salmo salar*) EFH by the New England Fisheries Management Council. Atlantic salmon EFH is described as all waters currently or historically accessible to Atlantic salmon within the streams, rivers, lakes, ponds, wetlands, and other water bodies of Maine, New Hampshire, Vermont, Massachusetts, Rhode Island and Connecticut. In Massachusetts, this designation only applies to the Merrimack and Connecticut Rivers basins. Atlantic salmon EFH includes all aquatic habitats in the watersheds of these two rivers, including all tributaries, to the extent that they are currently or were historically accessible for salmon migration. Atlantic salmon EFH excludes areas upstream of longstanding naturally occurring impassable barriers (i.e., natural waterfalls in existence for at least several hundred years).

Our rationale for this recommendation is that it would be impossible for NMFS to concur that Atlantic Salmon EFH would not be adversely affected by projects resulting in up to 5,000 sf of permanent impacts to freshwater wetlands and waterways. The existing and proposed PGP thresholds would continue to allow projects of this magnitude to be permitted as a Category I non-reporting project and not receive any federal screening and opportunity for conservation recommendations. It is important to note that based upon an assessment of stock levels, NMFS has determined that Atlantic Salmon is considered overfished which

exacerbates the importance of protecting EFH for this federally managed species. The freshwater habitat requirements of Atlantic Salmon are no less important than their marine habitat requirements. Therefore, we strongly recommend that NMFS be provided the opportunity through the PGP and the ACOE permit review process to screen all fill projects occurring in Atlantic Salmon EFH.

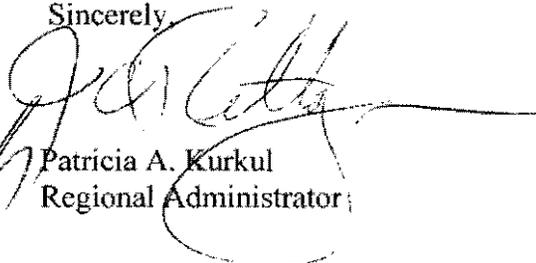
### **Endangered Species Impacts**

The Public Notice also proposes significant changes in the tidal and navigable waters dredging and dredge disposal thresholds. These modifications include increasing the maximum quantity of new dredging permissible under the PGP from the 10,000 cubic yards to 25,000 cubic yards. More importantly, the ACOE is also proposing to allow open water disposal which currently is only permissible with an Individual Permit. We recommend that the ACOE evaluates their proposed changes in light of existing Section 7 consultations.

### **Conclusions**

NMFS has a variety of important and administratively significant recommendations regarding re-issuance of the Massachusetts PGP. Of particular concern to NMFS is ensuring that MSFCMA EFH regulations are adequately incorporated into the PGP permit review process and addressing all ESA issues involving ocean dumping. In recognition to the variety of issues raised in this letter, we believe it would be prudent to arrange for a formal meeting of Federal resource agency staff to meet with you to discuss the items outlined above. Please feel free to contact Eric Hutchins of my staff at (978) 281-9313 if you have any questions about this letter or would like to pursue such a meeting.

Sincerely,



Patricia A. Kurkul  
Regional Administrator

cc: Mike Bartlett-USFWS (Concord, NH)  
Ron Manfredonia-EPA (Boston)  
Paul Howard-NEFMC (Saugus)

File: 1503-01 (MA) State-Wide  
#99-1470, Army Corps  
MAPGP



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

REGION 1

JOHN F. KENNEDY FEDERAL BUILDING  
BOSTON, MASSACHUSETTS 02203-0001

16 July 1999

William F. Lawless, P.E.  
Chief, Regulatory Branch  
U.S. Army Corps of Engineers  
New England District  
696 Virginia Road  
Concord, MA 01742-2751

Re: Public Notice No. 199901470

Dear Mr. Lawless:

This letter is in response to the proposed modifications to the Massachusetts Programmatic General Permit (MA PGP). It has come to our attention that significant changes to new dredging volumes and disposal options under Category II have been proposed without any prior coordination with our respective agencies beyond the Corps' distribution of the Public Notice.

Specifically, the EPA objects to the proposed increase in maximum new dredging volume from 10,000 to 25,000 cubic yards for Category II projects. Also, we object to the availability of open ocean disposal for such projects under Category II. We question the rationale for the increase in volume, and maintain that public disclosure on any proposed ocean dumping is not only important, but also is consistent with regulations promulgated under 40 CFR § 225.2 of the Ocean Dumping Act.

The EPA recommends that existing thresholds for new dredging projects under Category II remain at 10,000 cubic yards, and that an Individual Permit be required for any project proposing open ocean disposal.

Sincerely,



Roger A. Janson, Manager  
Water Quality Unit

cc: Peter Colosi, NMFS, Gloucester, MA  
Vern Lang, USFWS, Concord, MA  
Deerin Babb-Brott, MCZM, Boston, MA

RECORDED

JUL 21 1999

REGULATORY DIVISION



# United States Department of the Interior

FISH AND WILDLIFE SERVICE  
New England Field Office  
22 Bridge Street, Unit #1  
Concord, New Hampshire 03301-4986



REF: 199001470

July 13, 1999

Mr. William F. Lawless, Chief  
Regulatory Division  
U.S. Army Corps of Engineers  
696 Virginia Road  
Concord, MA 01742-2751

Dear Mr. Lawless:

This is in response to your June 8, 1999 Public Notice proposing to reissue the Massachusetts Programmatic General Permit (PGP) for a second five-year period.

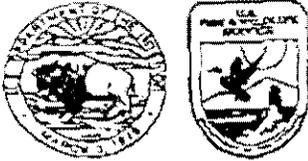
We understand that your staff is currently compiling data on the environmental effects of activities authorized under the existing PGP. This information should be of great value to the Service as we contemplate whether any changes to the PGP would be advisable. Accordingly, we request that you hold action on the public notice in abeyance until we have had the opportunity to review the above referenced data and provide comments.

Questions concerning the PGP review process should be directed to Mr. Vern Lang of this office at 603-225-1411.

Sincerely yours,

Michael J. Bartlett  
Supervisor  
New England Field Office

RECEIVED  
JUL 15 1999  
REGULATORY DIVISION



U.S. Fish & Wildlife Service

FAX

New England Field Office

22 Bridge Street, Unit #1, Concord, N.H. 03301  
Phone: 603/225-1411, FAX: 603/225-1467

Date: 7/13/99

To: CHRIS GARDNER / BILL LAWLESS

From: ALICE BARRETT

Pages to follow:

Subject: MASS TGA RESPONSE

CHRIS

SOOO, THIS IS LATE. WE HAVE  
BEEN CLOSED BECAUSE OF LAST WEEK'S  
STORM DAMAGE.

Alice



## United States Department of the Interior

### FISH AND WILDLIFE SERVICE

New England Field Office  
22 Bridge Street, Unit #1  
Concord, New Hampshire 03301-4986



REF: 199001470

July 13, 1999

Mr. William F. Lawless, Chief  
Regulatory Division  
U.S. Army Corps of Engineers  
696 Virginia Road  
Concord, MA 01742-2751

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Questions concerning the PGP review process should be directed to Mr. Vern Lang of this office at 603-225-1411.

Sincerely yours,

Michael J. Bartlett  
Supervisor  
New England Field Office



Massachusetts Audubon Society

208 South Great Road  
Lincoln, Massachusetts 01773

(781) 259-9500 July 8, 1999

William F. Lawless  
Chief, Regulatory Branch  
U.S. Army Corps of Engineers  
New England District  
696 Virginia Road  
Concord, MA 01742-2751

Re: **File # 199901470, Re-issuance of statewide Programmatic General Permit for Massachusetts**

Dear Mr. Lawless:

On behalf of the Massachusetts Audubon Society, I submit the following comments on the proposed re-issuance of the Programmatic General Permit (PGP) for Massachusetts. Massachusetts Audubon is generally supportive of the PGP and its re-issuance. The PGP allows the Army Corps of Engineers and other federal agencies to focus their limited staff resources on large projects and those with significant impacts, while relying on state regulatory procedures, notably the Massachusetts Wetlands Protection Act, to address the majority of smaller projects.

Massachusetts Audubon recommends, however, that the Army Corps strengthen the PGP regarding protection of vernal pools and state-listed rare species habitat. The current PGP allows filling of up to 5,000 s.f. of wetlands, including uncertified vernal pools or state-listed rare species habitat, without any review by the Army Corps or other federal agencies. The cumulative effects of many small wetland fills is significant, particularly when special wildlife habitat areas are impacted. Since the majority of vernal pools in Massachusetts are not certified, the wildlife habitat functions of these special wetland habitats are not addressed in most instances through the Massachusetts Wetlands Protection Act permitting process. Furthermore, a recent review of wetlands mitigation in Massachusetts ("Compensatory Wetlands Mitigation in Massachusetts," by Stephen Brown and Peter Veneman of the University of Massachusetts, September, 1998) confirmed that the wildlife habitat interest is not being adequately addressed through mitigation provided pursuant to the Massachusetts Wetlands Protection Act permitting process. Therefore, we believe that it is appropriate and necessary for the Army Corps to require Category II, screening level, review for all projects in Massachusetts affecting isolated wetlands (because they are likely to contain vernal pool habitat) and/or state-listed rare species habitat (based on the Massachusetts Natural Heritage and Endangered Species Program Atlas).

Thank you for considering these comments.

Sincerely,

E. Heidi Roddis  
Environmental Policy Specialist

cc: Ronald Manfredonia, EPA Office of Ecosystem Protection  
Lois Bruinooge, Mass. Department of Environmental Protection  
Mass. Natural Heritage and Endangered Species Program





Advocacy Department  
Massachusetts Audubon Society  
208 South Great Road  
Lincoln, MA 01773 (781-259-9500)

TO: NAME: Christine Godfrey  
ORGANIZATION: Army Corps  
PHONE NUMBER: \_\_\_\_\_  
FAX NUMBER: 978-318-8303

FROM: NAME: Ned Roddis  
FAX NUMBER: \_\_\_\_\_  
PHONE NUMBER: x7260

DATE: July 8, 1999

NUMBER OF PAGES FOLLOWING THIS COVER SHEET: 1

REGARDING: B PGP comments

COMMENTS: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

If there are any problems with the transmission of this fax, please contact Jennifer Steel, Assistant to the Director of Advocacy at (781) 259-9506 x7201.



Massachusetts Audubon Society

208 South Great Road  
Lincoln, Massachusetts 01773

(781) 259-9500 July 8, 1999

William F. Lawless  
Chief, Regulatory Branch  
U.S. Army Corps of Engineers  
New England District  
696 Virginia Road  
Concord, MA 01742-2751

Re: File # 199901470, Re-issuance of statewide Programmatic General Permit for Massachusetts

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Thank you for considering these comments.

Sincerely,

E. Heidi Roddis  
Environmental Policy Specialist

cc: Ronald Manfredonia, EPA Office of Ecosystem Protection  
Lois Bruinooge, Mass. Department of Environmental Protection  
Mass. Natural Heritage and Endangered Species Program





# Division of Fisheries & Wildlife

Wayne F. MacCallum, *Director*

July 8, 1999

William F. Lawless, P.E.  
Chief, Regulatory Branch  
U.S. Army Corps of Engineers  
New England District  
696 Virginia Road  
Concord, MA 01742-2751

RECEIVED  
JUL 13 1999  
REGULATORY BRANCH

RE: Re-issuance of statewide Programmatic General Permit (PGP) for Massachusetts, file #199901470

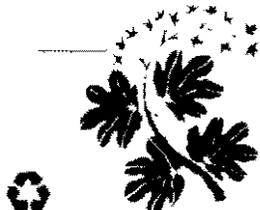
Dear Mr. Lawless,

The Natural Heritage & Endangered Species Program (NHESP) of the Massachusetts Division of Fisheries & Wildlife (DFW) understands that the U.S. Army Corps of Engineers (Corps) is re-issuing the Massachusetts Programmatic General Permit (PGP) for minimal impact activities in wetlands. The NHESP is committed to the protection of biological diversity in the Commonwealth of Massachusetts through biological research and inventory, data management, environmental impact review, restoration and management of rare species and their habitat, land acquisition and education. We would like to offer the following comments for your consideration in the development of the Massachusetts statewide PGP.

We believe that the Corps should strengthen the Massachusetts PGP to ensure that the wetland habitats of state-protected Endangered, Threatened, and Special Concern (state-listed) species are provided adequate protection under the federal Clean Water Act. We also believe that the Massachusetts PGP should be strengthened to protect vernal pool habitat wherever it occurs in wetlands of federal jurisdiction. Individual permit review for projects occurring in the habitats of state-listed rare species and vernal pool habitat would help reduce outright loss, and minimize adverse impacts to these important resources in the state.

#### *Habitat for State-Listed Rare Species*

Loss of actual habitat for state-listed rare species reduces the ability of a wetland system to support those rare species populations, and therefore reduces the likelihood of ensuring their persistence over the long-term. Even small alterations of the actual wetland habitat for rare species often results in long-term impacts that affect the ability of the wetland to support those rare species. It is our opinion that any discharge of fill material within state-listed rare species habitat constitutes more than minimal impacts, and should receive screening for potential impacts rather than be eligible for the statewide PGP.



### Natural Heritage & Endangered Species Program

Route 135, Westborough, MA 01581 Tel: (508) 792-7270 x 200 Fax: (508) 792-7275  
An Agency of the Department of Fisheries, Wildlife & Environmental Law Enforcement  
<http://www.state.ma.us/dfwele>

MA NHESP Comment  
Massachusetts statewide PGP  
July 8, 1999  
Page 2

*Vernal Pool Habitat*

Loss of vernal pool habitat has significant adverse effects on populations of vernal pool-dependent wildlife. Many species that rely on vernal pools are not able to find new breeding sites when their natal pools are lost, thus eliminating those breeding populations. Vernal pools are often quite small, and may be entirely lost in projects proposing less than 5000 square feet of fill. These small vernal pools are of particular importance in protecting local amphibian biodiversity. They provide breeding habitat for a number of species and also are important in metapopulation dynamics exhibited by many amphibian species. This is important for their long-term conservation. The statewide PGP should reflect the importance of vernal pools by requiring screening for projects proposing fill within vernal pools.

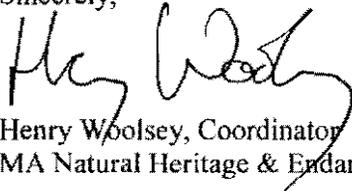
The statewide PGP should not rely on state certification exclusively for protecting vernal pools. Although certification provides an excellent source of information on vernal pool loci, the certification process is entirely dependent upon volunteer initiative. Vernal pool habitat is therefore very unevenly protected across the state, a problem that the NHESP is working on alleviating. However, the Corps should consider requiring screening for projects that propose to fill isolated, depressional wetlands that are likely to contain water for an extended period (two months or more) in most years, yet are not certified. Depressional wetlands that contain water for two months and are free of fish are, by definition, vernal pools.

The NHESP understands the burden of increased work loads felt by environmental review staff. However, even relatively small alterations in the actual habitat of state-listed rare species and vernal pools can result in more than minimal adverse impacts. The relative importance of both state-listed rare species habitats and vernal pools to the protection of biodiversity on statewide and regional scales means that protection, and thus extra scrutiny of permit applications, is warranted.

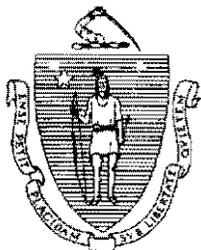
Thank you for considering these comments. Please feel free to contact Patricia Huckery or Matthew Burne at 508-792-7270 if you have any questions regarding this letter. X 151

X 151

Sincerely,



Henry Woolsey, Coordinator  
MA Natural Heritage & Endangered Species Program



COMMONWEALTH OF MASSACHUSETTS  
 EXECUTIVE OFFICE OF ENVIRONMENTAL AFFAIRS  
 DEPARTMENT OF ENVIRONMENTAL PROTECTION  
 ONE WINTER STREET, BOSTON, MA 02108 617-292-5500

ARGEO PAUL CELLUCCI  
 Governor

JANE SWIFT  
 Lieutenant Governor

BOB DURAND  
 Secretary

LAUREN A. LISS  
 Commissioner

William F. Lawless  
 Chief, Regulatory Branch  
 Department of Army, Corps of Engineers  
 696 Virginia Road  
 Concord, MA 01742-2751

July 7, 1999

RECEIVED  
 JUL 14 1999  
 10:30 AM

Dear Mr. Lawless:

I am writing you in reference to the proposed renewal of the Massachusetts Programatic General Permit (PGP). As you are aware, my staff has been working with the Corps to develop this PGP in an effort to coordinate and streamline regulatory reviews by our agencies. I am pleased to see that the revised draft PGP builds upon the simplified review process of the original PGP. In response to some of the proposed changes to the PGP, I would like to offer some additional suggestions which I feel will clarify the PGP procedures.

The primary comment on the draft PGP relates to the Applications Procedures section (page 2). In an attempt to assure that copies of the 401 application are provided in a timely fashion to the Corps, the current section states that "... an additional copy of the [WQC] be submitted to DEP for distribution to the Corps." To reduce the administrative burden on the Department associated with this requirement, I recommend that the text in this section be reworded to direct the applicant to send a copy of the 401 application directly to the Corps at the same time that an application is made to DEP. As part of this approach, DEP, in the course of reviewing the project, could copy the Corps on "Administrative Deficiency" or "Administrative Complete" correspondence on an application. Alternatively, once DEP has determined that the application is complete, DEP could request that the applicant send a copy of the complete application to the Corps as part of this Department's Administrative Complete letter which is sent to the applicant. These modifications should also be incorporated into the flow chart which was provided to this office under separate cover.

Under the Definition of Categories section (page 14), reference is made in Category II to wetland restoration project requirements that net environmental effects are "not more than minimal". This language is ambiguous and could perhaps be further clarified. On page 15 of this section, Category II text indicates that the Corps will determine if material is suitable for upland disposal. Since this Department typically has responsibility for determining the suitability of sediments for upland disposal, this definition may need to be rewritten.

Finally, there are a few editorial notes. One typo which was noted appears on page 2 in the last line of the first paragraph. Although "Condition 9, and page 10" is referenced, the proper citation appears to be condition 10 on page 8. Also, on page 5, there is a note that "DEP will recertify and may change the conditions". This language could be omitted with a reference to "314 CMR 9.00, as amended". Under the Contacts for Programmatic General Permit section on page 13, the phone number for the DEP-Northeast Regional Office should be changed to 978-661-7600.

Following the close of the public comment period and the revisions of the draft PGP, I fully expect that this Department will recertify the final PGP with similar, if not identical to those conditions included in the initial PGP certification. I would like to extend my thanks to you for the cooperative approach you have taken in revising the PGP. My staff have also been especially appreciative of the open and candid dialogue with your staff in attempting to improve the existing PGP. I look forward to our continued efforts to simplifying the regulatory permitting process and the completion of the final PGP.

Sincerely,

A handwritten signature in black ink, appearing to read "Glenn Haas", with a long horizontal flourish extending to the right.

Glenn Haas, Director  
Division of Watershed Management

Cc: Arlene O'Donnell, DEP  
Christine Godfrey, USACOE  
Lois Bruinooge, DEP



REPLY TO  
ATTENTION OF

**DEPARTMENT OF THE ARMY**  
NEW ENGLAND DISTRICT, CORPS OF ENGINEERS  
696 VIRGINIA ROAD  
CONCORD, MASSACHUSETTS 01742-2751

July 7, 1999

Regulatory Branch  
CENAE-CO-R-199901470

Mr. Peter Colosi, Jr.  
National Marine Fisheries Service  
Northeast Region  
One Blackburn Drive  
Gloucester, Massachusetts 01930

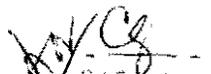
Dear Mr. Colosi:

We have received your request for an additional ten business days to comment on the Public Notice regarding the re-issuance of the Massachusetts Programmatic General Permit. We acknowledge this request and extend your comment period until July 23, 1999.

Sincerely,

William F. Lawless, P.E.  
Chief, Regulatory Branch  
Construction/Operations Division

  
PM

  
PATB



UNITED STATES DEPARTMENT OF COMMERCE  
National Oceanic and Atmospheric Administration  
NATIONAL MARINE FISHERIES SERVICE  
NORTHEAST REGION  
One Blackburn Drive  
Gloucester, MA 01930

JUL 7 1999

William F. Lawless  
Chief, Regulatory Branch  
U.S. Army Corps of Engineers  
696 Virginia Road  
Concord, MA 01742-2751

**RE: Re-issuance of Massachusetts Programmatic General Permit (#99-1470)**

Dear Mr. Lawless:

The National Marine Fisheries Service (NMFS) is actively reviewing the Public Notice regarding the re-issuance of the Massachusetts Programmatic General Permit (MAPGP). The Army Corps is proposing a variety of important changes to this permit and we would like to formally request an additional 10 business days for our staff to discuss and develop our written comments. We appreciate your consideration regarding this important matter. If you have any questions pertaining to this request, please contact Eric Hutchins at (978) 281-9313.

Sincerely,

Peter D. Colosi, Jr.  
Assistant Regional Administrator  
for Habitat Conservation

cc: Ron Manfredonia, USEPA (Boston)  
Mike Bartlett, USFWS (Concord, NH)

File: 1503-07 (MA) State-Wide  
#99-1470, MAPGP

RECEIVED  
JUL 19 1999  
REGULATION DIVISION



# FAX TRANSMISSION

HABITAT CONSERVATION  
NATIONAL MARINE FISHERIES SERVICE

One Blackburn Drive  
Gloucester, MA 01930  
978/281-9102  
Fax: 978/281-9301

To: Bill Lawless/

Date: 7/7/99

Christine Godfrey

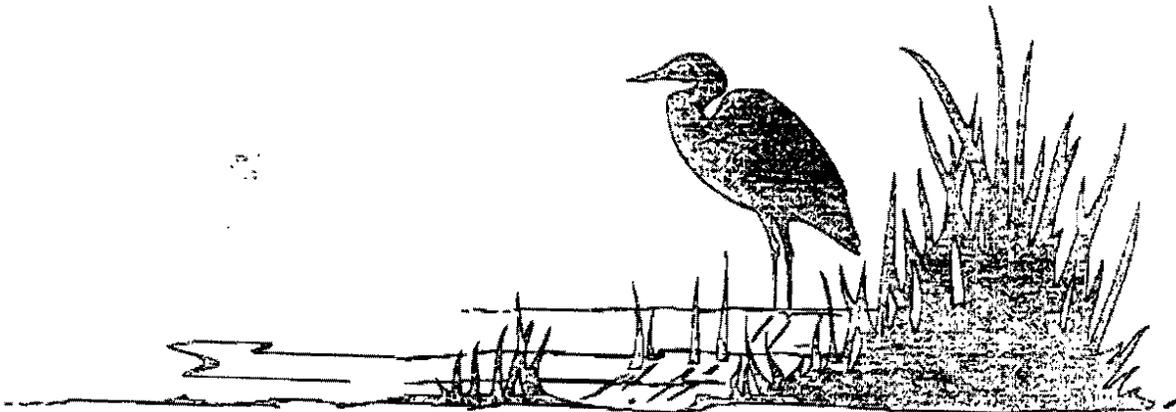
Pages: 2, including this cover sheet.

Fax #: 978-318-8303

From: Eric Hutchins

Subject:

COMMENTS: Extension Request...





UNITED STATES DEPARTMENT OF COMMERCE  
National Oceanic and Atmospheric Administration  
NATIONAL MARINE FISHERIES SERVICE  
NORTHEAST REGION  
One Blackburn Drive  
Gloucester, MA 01930

JUL 7 1999

William F. Lawless  
Chief, Regulatory Branch  
U.S. Army Corps of Engineers  
696 Virginia Road  
Concord, MA 01742-2751

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Peter D. Colosi, Jr.  
Assistant Regional Administrator  
for Habitat Conservation

cc: Ron Manfredonia, USEPA (Boston)  
Mike Bartlett, USFWS (Concord, NH)

File: 1503-07 (MA) State-Wide  
#99-1470, MAPGP



TELEPHONE CONVERSATION RECORD		DATE July 6, 1999
SUBJECT OF CONVERSATION MA PGP Public Notice		FILE NUMBER 144901470
PERSON CALLING Jody Gaudet	OFFICE CENAE-CO-R	PHONE NUMBER AND EXTENSION (478) 318-8860
PERSON CALLED Eric Hutchins	ADDRESS NMFS	PHONE NUMBER AND EXTENSION (478) 281-9313

SUMMARY OF CONVERSATION

I explained to Eric that I was calling in response to some emails between him and Chris Godfrey recently (attached). I asked Eric who would be replacing Jon Kuwland. He said that they will not know for a week or 2. I told Eric that we would like to see a blanket EFH sign-off for all Category I projects and Category II projects could receive EFH screening as part of the JP process. Eric said that is probably what would happen but they need an assessment for the Category I's first. I asked Eric if my cumulative impact assessment for the PGP reissuance would be sufficient and he said that it probably would. We went through specific concerns that he had in the PN, particularly in the new categories. His comments will be included in NMFS' response to the PN.



ERIC said that his agency will need more time to comment on the PN beyond the July 9, 1999 deadline. He asked if they need to send a formal request to extend the comment period. I told Eric that I would look into that and get back to him.

## Gaudet, Jody A NAE

---

**From:** Godfrey, Christine A NAE  
**Sent:** Friday, July 02, 1999 12:08 PM  
**To:** 'Eric Hutchins'; Gaudet, Jody A NAE  
**Cc:** Godfrey, Christine A NAE  
**Subject:** RE: Undeliverable mail

Hi Eric,

I'd be glad to discuss the MA PGP renewal with respect to EFH coordination.

I'm not sure I totally agree with Lou's comments. I envision the EFH coordination to be more process oriented. For instance, that cat 1 projects continue to be considered a "no affect", and that cat 2 projects will go through the EFH process worked out by Jon and me (which is incorporated into the screening process). The project coordination, therefore, and application of NMFS conservation recommendations, will occur through each project screening, including your opportunity for kick out. I'm not sure where Lou got the idea that would in any way be affected. Maybe we can set up a conference call with Jon in DC? Anyway, I'd appreciate the opportunity to talk before you send your letter. I'll ask Jody to set up a call. Thanks, Chris

-----Original Message-----

**From:** Eric Hutchins [mailto:Eric.Hutchins@noaa.gov]  
**Sent:** Tuesday, June 29, 1999 9:06 AM  
**To:** Christine.A.Godfrey@usace.army.mil  
**Subject:** Fwd:Undeliverable mail

----- Forwarded with Changes -----

**From:** Postmaster at MAILHUB  
**Date:** 6/28/99 4:33PM  
**To:** Eric Hutchins at ~NMFS-NERO1  
**\*cc:** Postmaster at MAILHUB  
**Subject:** Undeliverable mail

---



UNITED STATES DEPARTMENT OF COMMERCE  
National Oceanic and Atmospheric Administration  
NATIONAL MARINE FISHERIES SERVICE  
NORTHEAST REGION  
One Blackburn Drive  
Gloucester, MA 01930

JUL 7 1999

William F. Lawless  
Chief, Regulatory Branch  
U.S. Army Corps of Engineers  
696 Virginia Road  
Concord, MA 01742-2751

**RE: Re-issuance of Massachusetts Programmatic General Permit (#99-1470)**

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Sincerely,

Peter D. Colosi, Jr.  
Assistant Regional Administrator  
for Habitat Conservation

cc: Ron Manfredonia, USEPA (Boston)  
Mike Bartlett, USFWS (Concord, NH)

File: 1503-07 (MA) State-Wide  
#99-1470, MAPGP



Jody -  
This is a  
little off the  
mark. Let's  
discuss. -Chris

Christine,

A few comments that I think we (NMFS/Corps) will need to address. We are currently filling the gaps with Jon Kurland moving on. I will be in Concord on Wednesday (JP) if you have a minute to discuss. eric

Forward Header

Subject: MA-PGP Reauthorization  
Author: Lou Chiarella  
Date: 6/21/99 1:57 PM

Eric,

As a follow-up to today's staff meeting I just wanted to re-iterate the importance of conducting an EFH Consultation the the MAPGP. This process will also allow EFH to be a driving force behind what types of actions are contained within the PGP. As far as I can tell the consultation will be similar in scope and nature as a programmatic consultation.

The consultation will have to address all reasonably foreseeable adverse effects to EFH by the authorized activities within the EFH Assessment. NMFS will then provide conservation recommendations for the identified adverse impacts where possible. These recommendations could then be included as special conditions of the permit or as justification for re-evaluation of the appropriateness of the action being included as part of the PGP.

For ex. - Including all piers 4' wide and 4' high as a category I may be a result of the process.

Other special conditions such as time-of-year restrictions or construction BMPs may have be added to the PGP.

As part of the process we will also make sure we reserve our rights to screen actions and kick them out for additional consultation if necessary.

I am certainly willing to assist in this effort as appropriate. All t

ATT1009332.txt

he PGPs  
will have to do this when they expire.

-Lou

## Gaudet, Jody A NAE

---

**From:** Penta, Gregory R NAE  
**Sent:** Tuesday, July 06, 1999 11:32 AM  
**To:** Gaudet, Jody A NAE

Jody,

Gary Pasternak recommended that we include language in the MA PGP regarding our right to notify others (abutters, town officials, etc.) about an applicant's proposal.

Greg



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 1  
1 CONGRESS STREET, SUITE 1100  
BOSTON, MASSACHUSETTS 02114-2023

08

June 29, 1999  
William F. Lawless, P.E.  
Chief, Regulatory Branch  
U.S. Army Corps of Engineers  
New England District  
696 Virginia Road  
Concord, MA 01742-2751

RECEIVED  
JUL 1 1999  
EPA REGION 1

RE: Re-issuance of statewide Programmatic General Permit (PGP) for Massachusetts, file # 1999-01470

Dear Mr. Lawless:

The U.S. Environmental Protection Agency (EPA) is pleased to see that the U.S. Army Corps of Engineers (Corps) is re-issuing the Massachusetts Programmatic General Permit (PGP) pursuant to 33 C.F.R. Part 325.5(c)(3) for minimal impact activities in wetlands. As you know, EPA is extremely supportive of the PGPs in the six New England states.

EPA has one comment on the proposed PGP. Specifically, we believe that the Corps should take the opportunity during this re-issuance process to modify the Massachusetts PGP to ensure that vernal pools and state-listed species habitat are given adequate protection. The filling of vernal pools and wetlands providing state-listed species habitat typically results in more than minimal impacts, and therefore should not be eligible for a PGP in the absence of interagency screening and evaluation. In order to ensure that the PGP is being used for projects that truly have only minimal impacts, EPA believes that the federal agencies should, at a minimum, screen those projects involving fill in vernal pools and/or state-listed species habitat.

This suggested approach is not a novel concept. The Corps has tackled this issue in the Vermont PGP by defining "special wetlands" to include vernal pools and wetlands which provide habitat for threatened or endangered species as designated by the Vermont Natural Heritage Program. The PGP then prohibits discharges into special wetlands for Category A projects (i.e., those projects that are not screened by the federal agencies). EPA believes this approach is a reasonable one, and urges the Corps to adopt similar language in the Massachusetts PGP.

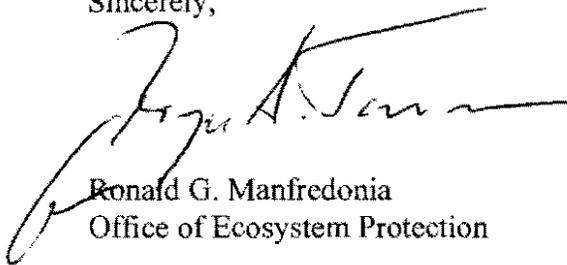
As the Massachusetts PGP currently stands, the Department of Environmental Protection (DEP) is requiring individual water quality certification for discharges to Outstanding Resource Waters (ORWs) (e.g., certified vernal pools) and rare and endangered species habitat. Therefore, requiring applicants to go through the screening process for discharges to these areas will

complement this state requirement. However, EPA believes that the Corps should also extend this protection to uncertified vernal pools. Vernal pools that have not yet been certified by the Natural Heritage and Endangered Species Program (NHESP) are no less valuable than certified vernal pools. Moreover, EPA's wetlands enforcement unit has noticed a recent rash of cases in which developers are rushing to fill vernal pools less than 5000 square feet in size before they can be certified simply to avoid federal and state jurisdiction. If the Corps requires screening of all of these areas, it could prevent the destruction of some of these valuable habitats.

EPA understands that the Corps is concerned about increased workload associated with expanding the type of projects that have to be screened. However, given the value of vernal pools and state-listed species wetland habitat, EPA believes that the extra scrutiny is warranted. Moreover, it is likely that the workload will not increase notably.

Please feel free to contact Ed Reiner of my staff at 617-918-1692 if you have questions regarding this letter. Thank you for the opportunity to comment.

Sincerely,

A handwritten signature in black ink, appearing to read "Ronald G. Manfredonia". The signature is fluid and cursive, with a long horizontal stroke at the end.

Ronald G. Manfredonia  
Office of Ecosystem Protection

cc: E. Reiner, CMA  
K. Bennett, SEE  
P. Huckery, NHESP, Westborough, MA



**THE COMMONWEALTH OF MASSACHUSETTS**  
EXECUTIVE OFFICE OF ENVIRONMENTAL AFFAIRS  
OFFICE OF COASTAL ZONE MANAGEMENT  
100 CAMBRIDGE STREET, BOSTON, MA 02202  
(617) 727-9530 FAX: (617) 723-5408

June 23, 1999

William F. Lawless, P.E.  
Department of the Army  
New England District, Corps of Engineers  
696 Virginia Road  
Concord, MA 01742-2751

RE: MCZM Federal Consistency Review of Department of the Army  
Programmatic General Permit renewal: Statewide.

Dear Mr. Lawless:

The Massachusetts Coastal Zone Management (MCZM) Office has received the necessary information to initiate our Federal Consistency Review for the proposed PGP Renewal.

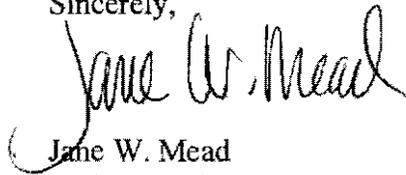
Notice that this proposal is undergoing consistency review by MCZM will be published in the next edition of the Environmental Monitor. The published date of that Monitor will initiate a 21 day public comment period. Enclosed please find a copy of the schedule that we will follow during our consistency review. Although we have 45 days (extendable with or object to it, we will make a vigorous effort to complete our review shortly after the close of the comment period.

**Note:** We cannot complete our review and issue a decision of consistency with our Program Policies until all applicable State environmental agency permits, licenses, certificates and other authorizations have been issued. Further, the applicable Federal permit cannot be issued until the Federal permitting agency receives a Consistency Concurrence letter from MCZM for the proposed project. To keep our review timely, we suggest that you forward copies of state environmental agency permits, licenses, etc. to MCZM as you receive them.

Future communications with this Office regarding the technical aspects of the above-referenced project should be directed to Jane Mead who will be conducting the Federal Consistency Review of this project for the MCZM Office. Please call me at (617)-727-9530 if you have any procedural questions about the review process.

RECEIVED  
JUL 29 1999  
REGISTRATION DIV.

Sincerely,

A handwritten signature in black ink that reads "Jane W. Mead". The signature is written in a cursive style with a large initial "J".

Jane W. Mead  
Project Review Coordinator

CC: Karen Kirk Adams, Section Chief  
Regulatory Branch, NED, US Army Corps of Engineers  
Greg Carrafiello, Acting Section Chief  
Waterways Section, Massachusetts DEP

MCZM Federal Consistency Review Schedule  
For a Federal Agency Activity\*

Review Steps

1. Document Receipt  
Received Consistency Certification on June 8, 1999.
  
2. Public Notice
  - (a) Notice of the initiation of this Federal Consistency Review will appear in the next edition of the MEPA Monitor which will be published on or about July 10, 1999.
  
  - (b) Publication in the Monitor begins a 21 day public comment period which will close on or about July 31, 1999.
  
3. MCZM must issue its Consistency decision  
Within 45 days of commencement of our review  
-unless granted an extension by the involved Federal Agency. The review period closes and a Consistency decision will be issued no later than July 22, 1999.

\* 301 CMR 21.01 – 21.04, 15 CFE 930.41



**DEPARTMENT OF THE ARMY**  
NEW ENGLAND DISTRICT, CORPS OF ENGINEERS  
696 VIRGINIA ROAD  
CONCORD, MASSACHUSETTS 01742-2751

REPLY TO  
ATTENTION OF

June 24, 1999

Regulatory Branch  
CENAE-CO-R-199901470

Ms. Lois Bruinooge  
Division of Wetlands and Waterways  
Massachusetts Department of Environmental Protection  
One Winter Street  
Boston, Massachusetts 02108

Dear Ms. Bruinooge:

This letter is in response to our recent telephone conversation regarding comments on the public notice for the proposed reissuance of the Massachusetts Programmatic General Permit (MAPGP). Enclosed are a copy of the public notice with the proposed changes to the MAPGP marked and a copy of the Aquaculture Letter of Permission dated, "1 September 1991."

If you have any comments or questions please feel free to contact me at (978) 318-8860.

Sincerely,

A handwritten signature in black ink, appearing to read "Jody A. Gaudet", with a horizontal line underneath. Below the signature, the initials "P.S." are written.

Enclosures

Jody A. Gaudet  
Project Manager  
Regulatory Branch

## Gaudet, Jody A NAE

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**From:** Godfrey, Christine A NAE  
**Sent:** Thursday, June 10, 1999 11:03 AM  
**To:** Adams, Karen K NAE; Gaudet, Jody A NAE  
**Cc:** Desista, Robert J NAE  
**Subject:** RE: Wampanoag Indian MOU

Yes. Jody, please add them both in the final PGP. Thanks, Chris

-----Original Message-----

**From:** Adams, Karen K NAE  
**Sent:** Monday, June 07, 1999 3:35 PM  
**To:** Gaudet, Jody A NAE; Godfrey, Christine A NAE  
**Cc:** Desista, Robert J NAE  
**Subject:** FW: Wampanoag Indian MOU

In anticipation of a MOU with the Wampanoags and the Narragansetts, should we add them for notification along with the SHPO in the new MA PGP? We don't give the SHPO any specified comment period now and I would prefer not to specify one. Other than that I don't see a problem with an agreement for the Wampanoags similar to the Narragansetts.

-----Original Message-----

**From:** Adams, Karen K NAE  
**Sent:** Monday, June 07, 1999 3:27 PM  
**To:** Atwood, Kathleen A NAE; Godfrey, Christine A NAE; Elliott, Michael J NAE  
**Cc:** Desista, Robert J NAE  
**Subject:** RE: Wampanoag Indian MOU

I spoke to Jeff Day to determine why they need an MOU. It is only because we did one for the Narragansetts and they are looking out for their interests as there are some disputed lands. They are concerned that we are assuming that anything in the disputed areas are the Narragansett's. He's not interested in getting us in the middle, he just wants to make sure they have the opportunity to work things out with the Narragansetts. He also noted that they had invited John Brown to come talk to them and were told he was no longer representing the Narragansetts in this matter.

-----Original Message-----

**From:** Atwood, Kathleen A NAE  
**Sent:** Monday, June 07, 1999 7:49 AM  
**To:** Godfrey, Christine A NAE; Elliott, Michael J NAE  
**Cc:** Desista, Robert J NAE; Adams, Karen K NAE  
**Subject:** RE: Wampanoag Indian MOU

Please be aware that the Corps could end up in the middle of tribal disputes on ancestral lands. Depending on the level of our involvement, we could become the mediator in their disputes. The Narragansetts are also claiming ancestral authority over parts of southeastern Massachusetts, and in fact I was told by a fellow archaeologist that he is expanding into central Massachusetts, with some concerns about a project around Mount Wachusett. Are we sending the Narragansetts Public Notices for Massachusetts?

Kate

-----Original Message-----

**From:** Godfrey, Christine A NAE  
**Sent:** Friday, June 04, 1999 10:27 AM  
**To:** Elliott, Michael J NAE  
**Cc:** Atwood, Kathleen A NAE; Desista, Robert J NAE; Adams, Karen K NAE; Godfrey, Christine A NAE  
**Subject:** RE: Wampanoag Indian MOU

I think we'll have to. You, Bob, Karen and I should meet to discuss a strategy. Thanks, Chris

-----Original Message-----

**From:** Elliott, Michael J NAE  
**Sent:** Thursday, June 03, 1999 9:48 AM  
**To:** Godfrey, Christine A NAE  
**Cc:** Atwood, Kathleen A NAE; Desista, Robert J NAE  
**Subject:** Wampanoag Indian MOU

20 Black Brook Road  
Aquinnah, MA 02535

(508) 645-9265

Jeff told me that their recognized tribal boundary has recently been expanded from MA into southeastern RI. They would like to be put on the RI Public Notice list. They are aware the Narragansetts recently signed a MOU with us; they would like to enter into a similar agreement with us.

He wanted to enter consultations on the Bloody Run Links site. I told him I considered that a "done deal" and didn't want to make major changes on this permitted project we had been working on since 1997 at this late date. He was OK with that but wants to be informed of upcoming applications that could impact RI sites with a Wampanoag affiliation.

Should we draft a MOU between us and the Wampanoags?

Mike E.

**Gaudet, Jody A NAE**

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**From:** Elliott, Michael J NAE  
**Sent:** Tuesday, September 07, 1999 10:47 AM  
**To:** Gaudet, Jody A NAE  
**Subject:** RE: Narragansett Tribe

Jody,

John Brown is still the NI THPO. The letter faxed to me was a copy of a letter from the NI Chief removing John from his duties...but he doesn't work for the Chief. The THPO office is under the Council of Elders and only they can fire him.

The address is:           John Brown  
                                  Narragansett Indian Tribal Historic Preservation Office  
                                  P.O. Box 700  
                                  Wyoming, Rhode Island 02898

John Brown is at (401) 241-1865; Doug Harris is at 401-241-1867

Last I knew their fax was not working so I faxed material to John's home: 860-848-4828

Mike

-----Original Message-----

**From:** Gaudet, Jody A NAE  
**Sent:** Tuesday, September 07, 1999 9:38 AM  
**To:** Elliott, Michael J NAE  
**Subject:** Narragansett Tribe

Mike,

What is the address, phone #, and fax # for the tribal historic preservation office?  
I would like to include it in the MAPGP.

Thanks,  
Jody





**US Army Corps  
of Engineers** ®  
New England District

696 Virginia Road  
Concord, MA 01742-2751

# PUBLIC NOTICE

Date: June 8, 1999

Comment Period Ends: July 8, 1999

File Number: 199901470

In Reply Refer To: Ms. Christine Godfrey 978-318-8338

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## AND NOTICE OF APPLICATION FOR MASSACHUSETTS 401 WATER QUALITY CERTIFICATION

**The New England District, U.S. Army Corps of Engineers, 696 Virginia Road, Concord, MA 01742-2751** is proposing to re-issue the statewide Programmatic General Permit (PGP) pursuant to 33 CFR Part 325.5(c)(3), for minimal-impact activities within the State of Massachusetts. The existing Massachusetts PGP expires on March 1, 2000. The new PGP will continue to provide a simplified review process for activities in Corps jurisdiction under Section 404 of the Clean Water Act, Section 10 of the Rivers and Harbors Act of 1899, and Section 103 of the Marine Protection, Research and Sanctuaries Act.

Programmatic General Permits are encouraged under the President's plan as a way to streamline state and Federal regulatory programs. The New England District has already had excellent success with streamlining these programs through the use of PGPs throughout New England.

Projects with minimal individual and cumulative effects on the aquatic environment will be approved administratively under this PGP. Projects with the potential for more than minimal effects will be subjected to individual permit review.

All PGP authorizations will be subject to the applicability requirements, procedures, and conditions contained in the PGP document (attached). Project eligibility under this PGP will fall into two categories: non-reporting projects (Category I) and reporting projects, requiring screening (Category II).

Category II activities will be reviewed by the Corps, the State, and the Federal resource agencies (U.S. Fish and Wildlife Service, U.S. Environmental Protection Agency, and National Marine Fisheries Service) as outlined within the attached document. Through interagency screening, the Corps will determine if the individual and cumulative adverse environmental impacts are minimal and whether the project may proceed under the PGP.

Projects that do not meet the terms and conditions of the PGP will require an individual permit. The individual permit review procedures are not altered by the PGP. Federal exemptions, which are not necessarily the same as the State's exemptions, would also not be altered by the PGP. In addition, PGP authorizations will **not** be valid until all other required Federal, State, and local permits and/or certifications are obtained.

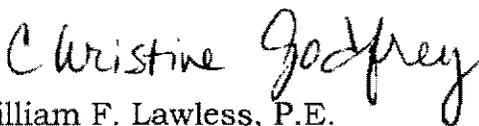
The proposed PGP does not affect activities authorized under the existing PGP that have commenced work prior to the new issuance. Activities which have commenced (i.e. are under construction or are under contract to commence) prior to the issuance date of this general permit, in reliance upon the terms and conditions of the category under which it was authorized, shall remain authorized provided the activity is completed within twelve months of the date of the expiration of the current PGP, that is by March 1, 2001. Therefore, this is not a modification, suspension, or revocation of the existing PGP.

In order to properly evaluate the proposed PGP, the Corps is seeking public comment. Anyone wishing to comment is encouraged to do so in writing within the comment period specified in this notice. Comments should be submitted to: Ms. Christine Godfrey, U.S. Army Corps of Engineers, Regulatory Branch, 696 Virginia Road, Concord, MA 01742-2751.

If you require additional information about the proposed PGP, please contact Ms. Godfrey at the address above or by telephone at (978) 318-8338 or toll free at (800) 343-4789 or (800) 362-4367 if calling from within Massachusetts.

Any person may request, in writing, within the comment period specified in this notice, that a public hearing be held to consider this proposal. Such requests shall specifically state the reasons for holding a public hearing. The Corps holds public hearings for the purpose of obtaining public comments, when that is the best means for understanding a wide variety of concerns from a diverse segment of the public.

Note the Corps is simultaneously requesting that the MA Department of Environmental Protection and Massachusetts Coastal Zone Management Program determine whether to issue, deny, or waive Water Quality Certification (WQC) and Coastal Zone consistency, respectively. The MA DEP will issue a notice regarding their tentative determination, therefore comments regarding WQC/Section 401 can be sent to MA DEP.

  
for William F. Lawless, P.E.  
Chief, Regulatory Branch  
Construction/Operations Division

SEE NEXT PAGE 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 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 value, fish and wildlife values, flood hazards, flood plain value, land use, navigation, 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 Section 106 of the National Historic Preservation Act of 1966, as amended, is necessary. This determination is based upon 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 listed as being eligible for inclusion therein are in the permit area or general vicinity.

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 State.
- Permit from Local Wetland Agency or Conservation Commission.
- 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. By this Public Notice, we are requesting the State concurrence or objection to the applicant's consistency statement.

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.**

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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 District, ATTN: Regulatory Branch, 696 Virginia Road, Concord, MA 01742-2751.

NAME: \_\_\_\_\_  
ADDRESS: \_\_\_\_\_

## DRAFT

Application No.: 199901470

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) proposes to issue 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, 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 page 11 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)**

## DRAFT

Work in Massachusetts that is subject to Corps jurisdiction (see Condition 2 on page 3), that meets the definition of Category I on attached the 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 9, and page 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)**

#### 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 10 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). The Corps will accept DEP's applications for its review. There is no need to apply separately to the Corps unless the activity involves dredging in a navigable water of the U.S. (see application procedures for dredging projects, below) or is not subject to State jurisdiction. However, in order to expedite the review, an additional copy of the WQC or Chapter 91 application should be submitted to DEP for distribution to the Corps. Once DEP determines that an application is complete, they will provide a copy of the complete application to the Corps for screening with the Federal Resource agencies and CZM. Applicants will be notified by the Corps 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, with a courtesy 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.

#### **Additional information required** may include:

- (a) purpose of the project;
- (b) photographs of wetland/waterway to be impacted;
- (c) 8 1/2" by 11" plan views of the entire property and project limits with existing and proposed conditions (legible, reproducible plans required);
- (d) wetland delineation for site, information on basis of delineation, and calculations of waterway and wetland impact areas (see Condition 2 on page 5);

## DRAFT

- (e) typical cross-section views of all wetland and waterway fill areas and wetland replication areas;
- (f) delineation of submerged aquatic vegetation, e.g., eelgrass beds, in tidal waters;
- (g) amount, 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;
- (h) mean low, mean high water and high tide elevations in navigable waters;
- (i) 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;
- (j) alternatives analyses submitted to the DEP for WQC review, and/or additional information compiled on alternatives.

### 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) 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) to be reviewed for the presence of historic/archaeological 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].

## **DRAFT**

### 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 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

**Note: These are the conditions under the existing PGP. Office of CZM will recertify and may change the conditions.**

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

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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

**NOTE: These are conditions under the existing PGP. DEP will recertify and may change the conditions.**

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.

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- (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 (formerly Soil 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 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. Individual WQC and CZM consistency concurrence are required 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.

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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. 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 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), or which is likely to destroy or adversely modify the critical habitat of such species, or which would result in a "take" of any

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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 12).

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 Magnuson-Stevens Fishery and Conservation Management Act. The Corps, if necessary, will include special conditions from the NMFS in order to protect essential fish habitat.

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 approved 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 May 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 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.

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.

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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 unavoidable 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 original contours.

17. 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.

18. 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

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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 15 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.

19. 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 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.

20. 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.

21. Storage of Seasonal Structures. Coastal structures, such as pier sections or 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 marsh.

22. 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:**

23. Inspections. The permittee shall permit 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 any work or post-dredging survey drawings for any dredging work.

24. 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 page 14, and/or any conditions included in a written Corps authorization.

25. 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.

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26. **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.

27. **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.

28. **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.

29. **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.

30. **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.

31. **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:**

32. **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.

33. **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

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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

\_\_\_\_\_  
DATE

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**Contacts for Programmatic General Permit:**

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)

Massachusetts Historical Commission  
The Massachusetts Archives Bldg.  
220 Morrissey Boulevard  
Boston, Massachusetts 02125  
(617) 727-8470

**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

**May 1999**

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

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

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

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  
(617) 932-7600

## DEFINITION OF CATEGORIES

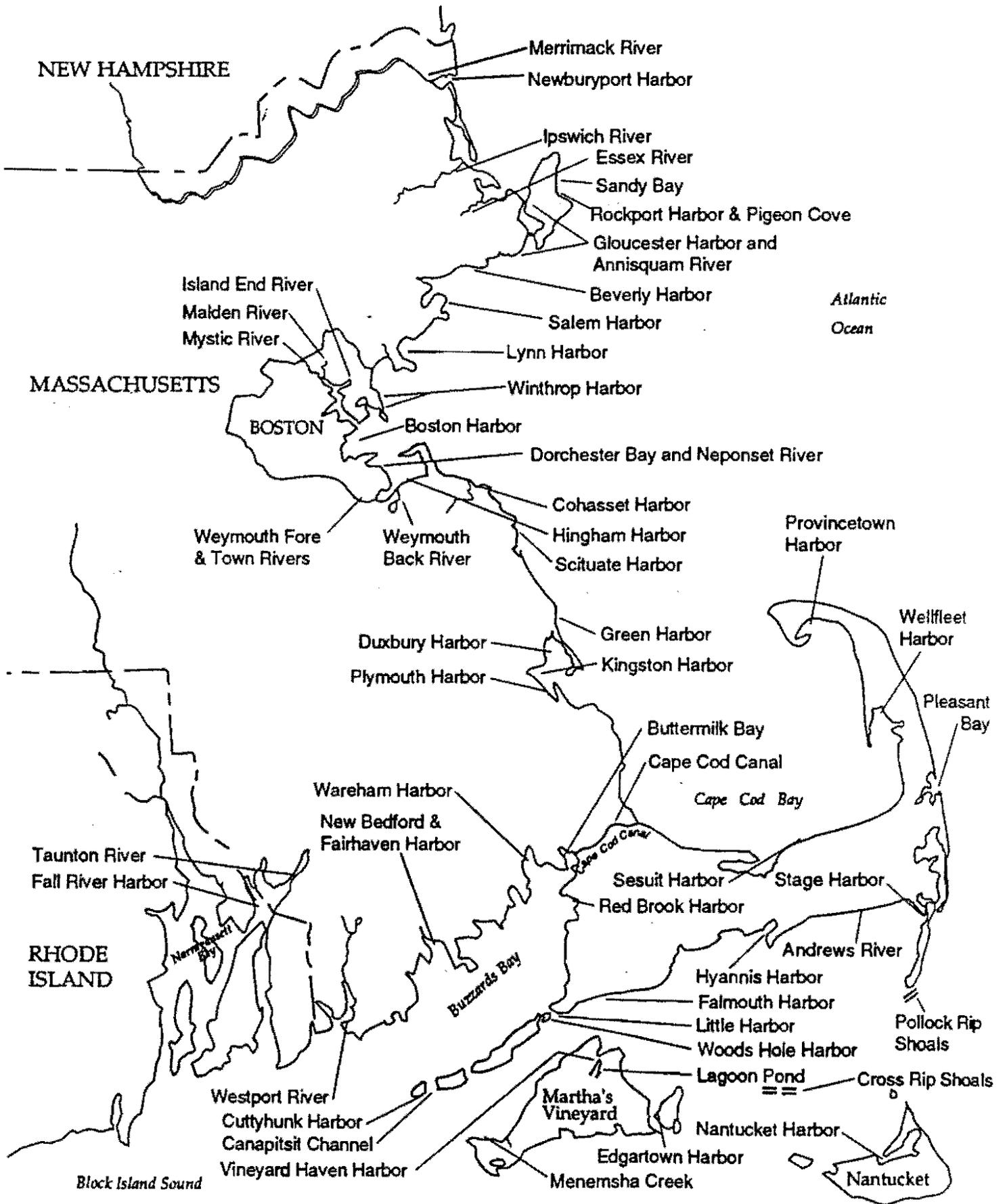
	CATEGORY I	CATEGORY II	INDIVIDUAL PERMIT
<b>A. INLAND WATERS AND WETLANDS (WATERS OF U.S. (1))</b>			
(a) NEW FILL/EXCAVATION DISCHARGES:	Less than 5000 s.f. inland waterway and/or wetland fill and secondary impacts (e.g., areas drained, flooded, or cleared). Impact area includes all temporary and permanent fill and discharges associated with mechanized land clearing.	5000 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 discharges associated with mechanized land clearing.	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 discharges associated with mechanized land clearing.
	* In-stream work limited to July 15 - October 1.	* Any dam, dike, water diversion, or water withdrawal project.	EIS required by the Corps.
	* This category excludes dams, dikes, water diversions, or water withdrawals.	* Time-of-year restriction to be determined case-by-case.	
	* Excludes work on Corps properties and Corps-controlled easements (6).	Any amount of fill associated with proactive wetland restoration where Corps determines, in coordination with State and Federal agencies, that net environmental effects are not more than minimal.	
(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.	
	* In-stream work limited to July 15 - October 1.		
(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 up to 1 acre and/or with change in use.	Replacement of non-serviceable fill, or repair/maintenance of serviceable fill greater than 1 acre.

	<b>CATEGORY I</b>	<b>CATEGORY II</b>	<b>INDIVIDUAL PERMIT</b>
<b>B. TIDAL or NAVIGABLE WATERS (2)</b>			
(a) <b>FILL:</b>	Fills authorized by Ch. 91 Amnesty program (e.g., seawalls, bulkheads).  No provisions for new or previously unauthorized fills in Category I, other than those authorized under the MA Chapter 91 Amnesty program.	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 special aquatic site (3) fill or discharges associated with mechanized land clearing up to 1 acre.  No permanent special aquatic site fill or discharges associated with mechanized land clearing, except fill or discharges associated with proactive wetland restoration. Fill may be in any amount but net adverse effect must not be more than minimal.	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 special aquatic site (3) fill or discharges associated with mechanized land clearing greater than 1 acre.  Permanent tidal wetland fill in any amount, other than as specified in Cat. II.  EIS required by the Corps.
(b) <b>REPAIR AND MAINTENANCE WORK:</b>	Repair/maintenance of existing, currently-serviceable, authorized structures and fills, including Amnesty-approved fills, with no expansion or change in use.  * Must be rebuilt in same footprint.	Replacement of any non-serviceable structure or fill, or repair/maintenance of a serviceable structure or fill with expansion and/or change in use (fill limits 1 acre for replacement and/or expansion).	Replacement of non-serviceable structure or fill, or repair/maintenance of serviceable structure or fill, with fill replacement or expansion greater than 1 acre.
(c) <b>DREDGING:</b>	Maintenance dredging less than 1000 c.y. with upland disposal, provided proper siltation controls are used.  * Dredging and disposal operations limited to November 1 - January 15.  * No impacts to special aquatic sites (3).	Maintenance dredging and disposal greater than 1,000 c.y., new dredging up to 25,000 c.y., or dredging that does not meet the terms in Cat. 1.  Disposal includes upland, open water, or beach nourishment, only if Corps, in consultation with Federal and State resource agencies, finds material suitable.  * No impacts to special aquatic sites (3).  * See (a) above for limitations on fill for beach nourishment.	Maintenance dredging and disposal (any amount) in or affecting a special aquatic site (3), new dredging greater than 25,000 c.y., or any amount in or affecting special aquatic sites.

	<b>CATEGORY I</b>	<b>CATEGORY II</b>	<b>INDIVIDUAL PERMIT</b>
(d) MOORINGS:	Private, non-commercial, non-rental single boat moorings not associated with any boating facility (4), and authorized by the local harbormaster, provided it is not located in a Federal Navigation Project other than a Federal Anchorage.	Moorings that do not meet the terms in Cat. I.	Moorings within the horizontal limits, or with moored vessels that extend within the limits of a Corps Federal Navigation Project, except those in Federal Anchorages authorized in Cat. I.
(e) PILE-SUPPORTED STRUCTURES AND FLOATS:	Piers and structures licensed by Ch. 91 through the Amnesty program; or Private, bottom-anchored floats up to 400 s.f. in size; or 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 special aquatic sites (3), unless at least 1:1 height:width ratio (7); * 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.	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.
(f) MISCELLANEOUS:	Temporary buoys, markers, floats, and similar structures for recreation during specific events, provided they are removed within 30 days after the use has discontinued.	Structures or work in or affecting tidal and navigable waters that are not defined under any of the headings listed above. Includes, but is not limited to, utility lines, aerial transmission lines, pipelines, outfalls, boat ramps, bridges, etc.	Structures or work within the horizontal limits of Corps Federal Navigation Projects, or with docked or moored vessels that extend within those limits. Does not include utility lines; aerial and subsurface crossings fall into Cat. II.

	<b>CATEGORY I</b>	<b>CATEGORY II</b>	<b>INDIVIDUAL PERMIT</b>
(f) MISCELLANEOUS: (cont.)	Coast Guard-approved aids to navigation.	Shellfish aquaculture facilities; refer to limitations of Corps Aquaculture Letter of Permission dated Sep. 1, 1991 for guidelines.	EIS required by the Corps.
	Oil spill clean-up temporary structures and fill.		
	Fish and wildlife harvesting structures and fill.		
	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.		
Footnotes:			
1. Waters of the U.S. in inland areas: Inland rivers, streams, lakes, ponds, and wetlands.			
2. Navigable Waters: 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).			
3. Special Aquatic Sites: Include wetlands and saltmarsh, mudflats, and vegetated shallows (see (5) below).			
4. Boating Facilities: Facilities that provide, rent or sell mooring space, such as marinas, yacht clubs, boat clubs, boat yards, town facilities, dockominiums, etc.			
5. Vegetated Shallows: Subtidal areas that support rooted aquatic vegetation such as eelgrass.			
6. Contact the Corps, ATTN: Real Estate Division to initiate reviews with respect to both Corps holdings and permit requirements.			
7. The proposed structure shall be at least as high as it is wide (up to 4' wide) over the substrate of the special aquatic site.			

# Federal Navigation Projects in Massachusetts





## Massachusetts Association of Conservation Commissions

*"protecting wetlands and open space through education and advocacy"*

10 Juniper Rd. • Belmont • Massachusetts 02478

Phone: 617-489-3930 • Fax: 617-489-3935

Western Outreach Office: 2 West Street • Hadley MA 01035

June 8, 1999

Christine A. Godfrey  
Chief, Policy & Technical Support Section  
Regulatory Branch  
Department of the Army  
Corps of Engineers  
696 Virginia Rd.  
Concord, MA 01742

Dear Christine:

Enclosed is the mailing list for all 351 Conservation Commissions throughout the Commonwealth of Massachusetts that you requested. They are formatted in a way that should enable you to copy them directly onto the Avery Label #5161.

If you have questions, please feel free to contact me at 617-489-3930.

Sincerely,

Lindsay Martucci  
Administrative Assistant

RECEIVED

JUN 10 1999

REGISTRATION SECTION

MACC  
10 JUNIPER ROAD  
BELMONT, MA 02478

Invoice

Invoice #: 00002417  
Date: 6/8/99  
Ship Via:  
Page: 1

Bill To:

Amy Corps of Engineers

Ship To:

Amy Corps of Engineers  
New England District, Corps  
of Engineers  
696 Virginia Rd.  
Concord, MA 01742

Description	Amount	Tx
Conservation Commission mailing addresses	\$100.00	

	Freight:	\$0.00
	Sales Tax:	\$0.00
	Total Amount:	\$100.00
	Amount	\$0.00
Your Order #: W13G8691550696	Balance Due:	\$100.00
Shipping Date:		
Terms: C.O.D.		



REPLY TO  
ATTENTION OF

**DEPARTMENT OF THE ARMY**  
NEW ENGLAND DISTRICT, CORPS OF ENGINEERS  
696 VIRGINIA ROAD  
CONCORD, MASSACHUSETTS 01742-2751

June 4, 1999

Regulatory Branch  
CENAE-CO-R-199901470

Ms. Susan Snow-Cotter  
Acting Assistant Director  
Massachusetts Coastal Zone Management  
100 Cambridge Street, 20<sup>th</sup> floor  
Boston, Massachusetts 02202

Dear Ms. Snow-Cotter:

This letter is in reference to the proposed renewal of the Massachusetts Programmatic General Permit (PGP). The Corps of Engineers will release a public notice soliciting comments on June 8, 1999. A copy of the public notice and the draft PGP entitled, "Department of the Army Programmatic General Permit, Commonwealth of Massachusetts," are enclosed.

As you are aware, your staff has been working with the Corps to develop this PGP. We appreciate your time and effort in this endeavor and are confident that the renewed PGP will further streamline and simplify the Corps permit process.

Therefore, we request that your agency issue coastal zone management consistency concurrence for this PGP in accordance with Section 307 (c) of the Coastal Zone Management Act for projects regulated by the Massachusetts Coastal Zone Management Plan.

Please contact Ms. Christine Godfrey of the Regulatory Branch at (978) 318-8338 if there are any questions. Thank you for your assistance in this matter.

Sincerely,

William F. Lawless, P.E.  
Chief, Regulatory Branch  
Construction/Operations Division

Enclosures

MS  
PM  
CG  
Sect. Ch.  
CG  
Br. Ch.

## Gaudet, Jody A NAE

---

**From:** Kelly, Grant NAE  
**Sent:** Friday, June 04, 1999 1:41 PM  
**To:** Gaudet, Jody A NAE  
**Cc:** Adams, Karen K NAE  
**Subject:** MA PGP P.N.

Following are my comments:

1. A.(a), Cat II...."State and Federal agencies"....*this appears to give the State the power to kick out to an individual permit if they're not satisfied during the coordination. Do we want to do that? Why do we need to formally coordinate with the State....we will probably do it anyway...there's nothing gained by spelling it out here. Same issue at B.(c), Cat II.*
2. All references to "mechanized land clearing" under B. Tidal Or Navigable Waters. *You seem to have replaced the term "excavation" with the "mechanized land clearing" words. I'm not sure that it makes any sense seaward of the high tide line. It's unlikely that there's going to be anything to clear in this environment.*
3. B. (e), cat I...."1:1 height:width ratio".....*since "special aquatic sites" include eel grass and other SAV, this seems to suggest that a 6' wide float is OK as long as it's in water deeper than 6' (at low tide, presumably). Is this really OK? I know that NMFS doesn't want any floats over SAV because of benthic impacts from dragging mooring tackle, in addition to shading impacts.*
4. I'm still working with NMFS & USFWS to retain the Cat I classification for in-stream crossings where work will occur outside of the Condition 18 window, *provided that MA Div of Fisheries has issued a written letter expressing no concerns, and imposing no (or more liberal) time-of-year restrictions.*

**Adams, Karen K NAE**

---

**Full Name:** Rick Zeroka  
**Last Name:** Zeroka  
**First Name:** Rick  
**Company:** Weston & Sampson

**Business Address:** 5 Centennial Drive  
Peabody, MA 01960-7985

**Business:** (978) 977-0110 ,ext2254  
**Business 2:** (978) 532-1900  
**Business Fax:** (978) 977-0100

**Web Page:** <http://www.westonandsampson.com>

*[Handwritten notes and scribbles, including the number 978 and other illegible characters.]*

TELEPHONE CONVERSATION RECORD		DATE
SUBJECT OF CONVERSATION		FILE NUMBER
Wampanoags of Gay Head		1999 01470
PERSON CALLING	OFFICE	PHONE NUMBER AND EXTENSION
Judy Gaudet	CE NAT-O-R	(478) 318 8860
PERSON CALLED	ADDRESS	PHONE NUMBER AND EXTENSION
Jeff Day	Tribe (conservations)	(508) 6415-9265
SUMMARY OF CONVERSATION		
<p>NOTE: For reissuance of the MAPGP I needed to know if there were any tribal lands in MA that were not subject to state jurisdiction. Kate Atwood was not sure but told me that the only federally recognized tribe in MA is the Wampanoags of Gay Head. She suggested that I contact Jeff Day. <del>Atwood</del></p> <p>I explained to Jeff why I was calling &amp; asked if the tribe was subject to state jurisdiction. Jeff says that they are currently subject to state jurisdiction because they don't have their own review process in place.</p> <p>I asked Jeff if we could be notified if / when they establish their own review process. He said that he would do so.</p>		



DEPARTMENT OF THE ARMY  
NEW ENGLAND DISTRICT, CORPS OF ENGINEERS  
696 VIRGINIA ROAD  
CONCORD, MASSACHUSETTS 01742-2751

REPLY TO  
ATTENTION OF

June 4, 1999

Regulatory Branch  
CENAE-CO-R-199901470

Ms. Lindsay Martucci  
MACC  
10 Juniper Road  
Belmont, Massachusetts 02478

Dear Ms. Martucci:

This letter is to request a copy of the addresses, in label format, for the conservation commissions in Massachusetts. We would like this list in order to send a copy of the public notice for the proposed reissuance of the Massachusetts Programmatic General Permit. Enclosed you will find a copy of this public notice for your records. The opening and closing dates for this public notice are June 8 and July 8, respectively.

We understand that there is a fee of \$100 for this list. Please accept the enclosed copy of the purchase request as assurance of payment. A check will be sent to your office within the next few weeks.

Thank you for your assistance. If you have any questions, please feel free to contact Ms. Jody Gaudet of my staff at (978) 318-8860.

Sincerely,

Christine A. Godfrey  
Chief, Policy & Technical Support Section  
Regulatory Branch

Enclosures

  
CA  
  
J.G.

PURCHASE REQUEST AND COMMITMENT For use of this form, see AR 37-1: the proponent agency is Hq Dept. ARMY				PURCHASE INSTRUMENT NO.		REQUISITION NO. W13G8691550696		DATE 04Jun1999		PAGE 0001	
TO: Purchasing and Contracting Officer				THRU: CONTRACT BRANCH				FROM: POLICY ANALYSIS & TECH			
It is requested that the supplies and services enumerated below or on attached list be:											
PURCHASED FOR POLICY ANALYSIS & TECH						DELIVERED TO SEE LINE ITEM BELOW				NOT LATER THAN (DATE) SEE LINE ITEM BELOW	
The supplies and services listed below cannot be secured through normal channels or other Army supply sources in the immediate vicinity, and their procurement will not violate existing regulations pertaining to local purchases for stock, therefore, local procurement is necessary for the following reason: (Check appropriate box and complete item)						NAME OF PERSON TO CALL FOR ADDITIONAL INFORMATION MARIE FARESE				TELEPHONE NUMBER	
LOCAL PURCHASES AUTHORIZED AS THE NORMAL MEANS OF SUPPLY FOR THE FOREGOING BY				REQUISITIONING DISCLOSES NONAVAILABILITY OF ITEMS AND LOCAL PURCHASE IS AUTHORIZED BY				Fund Certification			
						The supplies and services listed on this request are properly chargeable to the following allotments, the available balances of which are sufficient to cover the cost thereof, and funds have been committed.					
EMERGENCY SITUATION PRECLUDES USE OF REQUISITION CHANNELS FOR SECURING ITEM						ACCOUNTING CLASSIFICATION AND AMOUNT					
SEE LINE ITEM BELOW											
\$105.00											
ITEM		DESCRIPTION OF SUPPLY OR SERVICES		QUANTITY	UNIT	ESTIMATED					
						UNIT PRICE	TOTAL COST				
0001		MAILING LABELS W/ADDRESSES OF MASS. CONSERV. COMM.		0	LS	\$ .000	\$100.00				
DEL DATE	04Jun1999	96 NA X	3126.0000	E6 X	08 2418	008204	96190 2520 A00064				
SHIP TO	LOGISTICS OFFICE					CONCORD	MA				
DEL TO	MARIE FARESE						978-318-8292				
0002		SHIPPING AND HANDLING		0	LS	\$ .000	\$5.00				
DEL DATE	04Jun1999	96 NA X	3126.0000	E6 X	08 2418	008204	96190 2520 A00064				
SHIP TO	LOGISTICS OFFICE					CONCORD	MA				
DEL TO	MARIE FARESE						978-318-8292				
TYPED NAME AND GRADE OF INITIATING OFFICER MARIE FARESE						SIGNATURE /S/MARIE FARESE		DATE 04Jun1999		TYPED NAME AND GRADE OF APPROVING OFFICER OR DESIGNEE	
TELEPHONE NO.										SIGNATURE	
TYPED NAME AND GRADE OF SUPPLY OFFICER						SIGNATURE		DATE		DATE	
										SUSAN MEHIGAN BUDGET ANALYST	
										/S/SUSAN MEHIGAN	
										04Jun1999	
THE FOREGOING ITEMS ARE REQUIRED NOT LATER THAN AS INDICATED ABOVE FOR THE FOLLOWING PURPOSE 000 SOURCE: MACC, 10 JUNIPER ROAD, BELMONT, MA 02478 POC:LINDSAY MARTUCCI 000 000 NEED LABELS TO MAIL MAPGP PUBLIC NOTICES TO MACDC MEMBERS						ARE MORE THAN 7 DAYS REQUIRED TO INSPECT AND ACCEPT THE REQUESTED GOODS OR SERVICES YES ___ NO ___ IF YES, NUMBER OF DAYS REQUIRED					



US Army Corps  
of Engineers  
New England District

### 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:						
Judy Gaudet		CENAE-CO-R	(478) 318-8866		(478) 318-8303	
TO:						
Lindsay Martucci		MA CC	(617) 484-3430		(617) 484-3435	
CLASSIFICATION	PRECEDENCE	NO. PAGES (Including this Header)	DATE-TIME	MONTH	YEAR	RELEASER'S SIGNATURE
		3	3:00pm 6/4/09			Judy Gaudet

REMARKS

here is a copy of the letter requesting labels  
I am putting it in the mail today. A copy of the public notice  
Thanks, Judy

Space Below For Communications Center Use Only



**DEPARTMENT OF THE ARMY**  
NEW ENGLAND DISTRICT, CORPS OF ENGINEERS  
696 VIRGINIA ROAD  
CONCORD, MASSACHUSETTS 01742-2751

REPLY TO  
ATTENTION OF

June 4, 1999

Regulatory Branch  
CENAE-CO-R-199901470

Ms. Susan Snow-Cotter  
Acting Assistant Director  
Massachusetts Coastal Zone Management  
100 Cambridge Street, 20<sup>th</sup> floor  
Boston, Massachusetts 02202

Dear Ms. Snow-Cotter:

This letter is in reference to the proposed renewal of the Massachusetts Programmatic General Permit (PGP). The Corps of Engineers will release a public notice soliciting comments on June 8, 1999. A copy of the public notice and the draft PGP entitled, "Department of the Army Programmatic General Permit, Commonwealth of Massachusetts," are enclosed.

As you are aware, your staff has been working with the Corps to develop this PGP. We appreciate your time and effort in this endeavor and are confident that the renewed PGP will further streamline and simplify the Corps permit process.

Therefore, we request that your agency issue coastal zone management consistency concurrence for this PGP in accordance with Section 307 (c) of the Coastal Zone Management Act for projects regulated by the Massachusetts Coastal Zone Management Plan.

Please contact Ms. Christine Godfrey of the Regulatory Branch at (978) 318-8338 if there are any questions. Thank you for your assistance in this matter.

Sincerely,

William F. Lawless, P.E.  
Chief, Regulatory Branch  
Construction/Operations Division

Enclosures

  
PM

  
Sec. Ch.

  
Br. Ch.



**DEPARTMENT OF THE ARMY**  
NEW ENGLAND DISTRICT, CORPS OF ENGINEERS  
696 VIRGINIA ROAD  
CONCORD, MASSACHUSETTS 01742-2751

REPLY TO  
ATTENTION OF

June 4, 1999

Regulatory Branch  
CENAE-CO-R-199901470

Ms. Arleen O'Donnell  
Assistant Commissioner  
Department of Environmental Protection  
One Winter Street  
Boston, Massachusetts 02108

Dear Ms. O'Donnell:

This letter is in reference to the proposed renewal of the Massachusetts Programmatic General Permit (PGP). The Corps of Engineers will release a public notice soliciting comments on June 8, 1999. A copy of the public notice and the draft PGP entitled, "Department of the Army Programmatic General Permit, Commonwealth of Massachusetts," are enclosed.

As you are aware, your staff has been working with the Corps to develop this PGP. We appreciate your time and effort in this endeavor and are confident that the renewed PGP will further streamline and simplify the Corps permit process.

Therefore, we request that your agency issue water quality certification for this PGP in accordance with Section 401 of the Federal Clean Water Act 33 USC Sec. 1341 for projects regulated by the Massachusetts Department of Environmental Protection.

Please contact Ms. Christine Godfrey of the Regulatory Branch at (978) 318-8338 if there are any questions. Thank you for your assistance in this matter.

Sincerely,

William F. Lawless, P.E.  
Chief, Regulatory Branch  
Construction/Operations Division

Enclosures

  
WFL

  
CG

Sect. Ch.

  
Christine Godfrey  
Sect. Ch.



**DEPARTMENT OF THE ARMY**  
NEW ENGLAND DISTRICT, CORPS OF ENGINEERS  
696 VIRGINIA ROAD  
CONCORD, MASSACHUSETTS 01742-2751

REPLY TO  
ATTENTION OF

June 4, 1999

Regulatory Branch  
CENAE-CO-R-199901470

Ms. Lois Bruinooge  
Division of Wetlands and Waterways  
Massachusetts Department of Environmental Protection  
One Winter Street  
Boston, Massachusetts 02108

Dear Ms. Bruinooge:

This letter is in reference to the proposed renewal of the Massachusetts Programmatic General Permit (PGP). The Corps of Engineers will release a public notice soliciting comments on June 8, 1999. A copy of the public notice and the draft PGP entitled, "Department of the Army Programmatic General Permit, Commonwealth of Massachusetts," are enclosed.

Also, enclosed is a flowchart with our proposed procedures for application to the Corps and the checklist that we discussed at our meeting on April 12, 1999. An updated checklist will be written once the categories of the new PGP are finalized. We ask that you provide comments on these materials.

We appreciate your time and effort in this endeavor and are confident that the renewed PGP will further streamline and simplify the Corps permit process. If you have any comments or questions please feel free to contact Ms. Jody Gaudet at (978) 318-8860.

Sincerely,

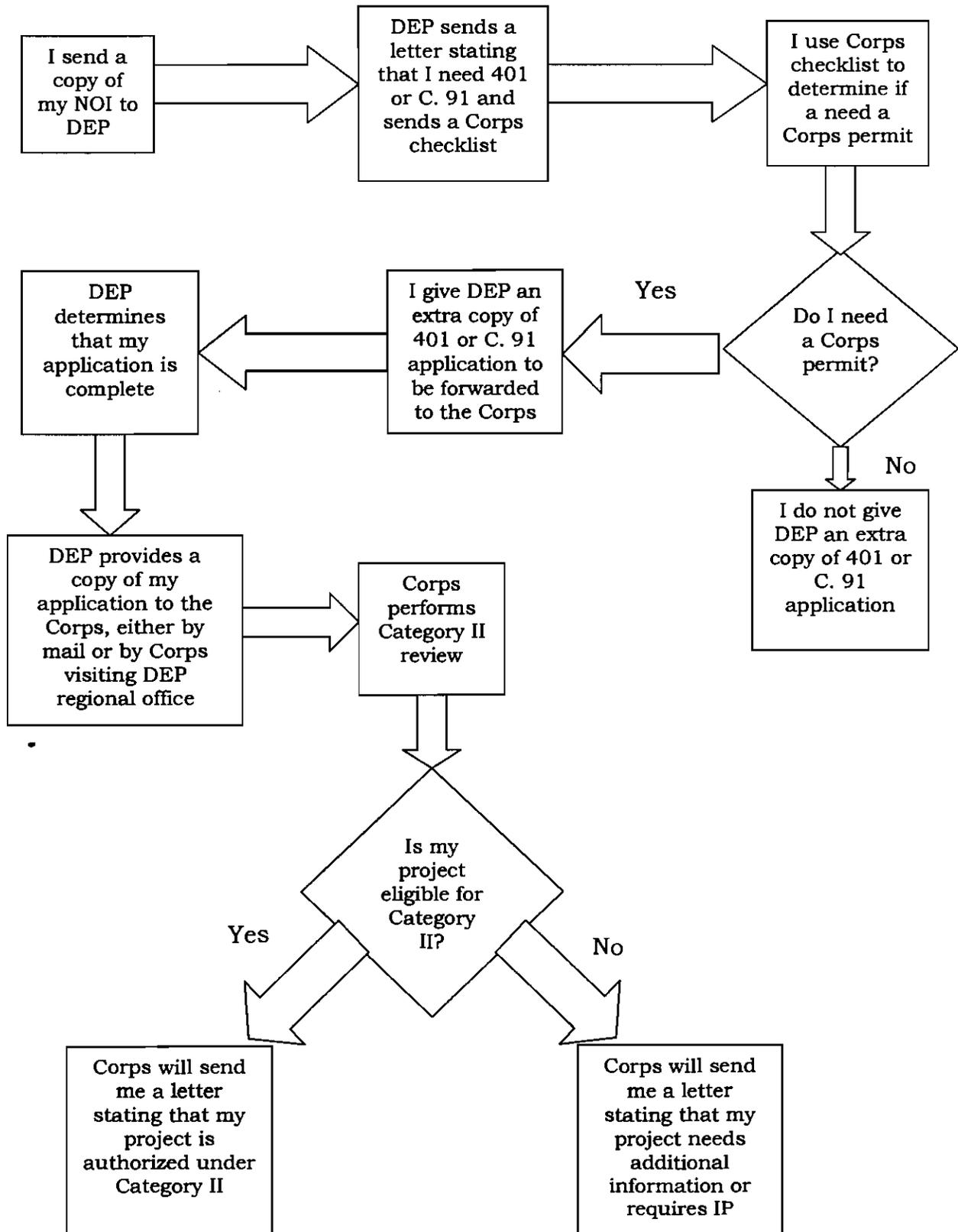
Christine Godfrey  
Chief, Policy & Technical Support Section  
Regulatory Branch

Enclosures

*PM*

*Sec. 9.*

# Proposed Corps Application Procedures Under MAPGP



## **U.S. Army Corps of Engineers Checklist for Applicants**

If your project meets any of the following, you must submit a copy of your completed Chapter 91 application to the U.S. Army Corps of Engineers, Regulatory Branch, 696 Virginia Road, Concord, MA 01742 for a Federal permit review. All projects authorized by the Corps under the Massachusetts Programmatic General Permit must not cause more than minimal adverse impacts. Projects with more than minimal adverse impacts require review under our Individual Permit program.

### **ALL PROJECTS:**

- Any work affecting a Federal Navigation Project.
- Environmental Impact Statement required by the Corps.
- Discharges of dredged or fill material into waters of the U.S.<sup>1</sup> (see MADEP Water Quality/Section 401 application for such projects).

### **Dredging in Navigable Waters<sup>2</sup>:**

- Maintenance dredging greater than 1,000 c.y.
- New dredging of any amount.
- Disposal of dredged material in wetlands or waters of the U.S.
- Improper siltation controls used.
- Any work in special aquatic sites<sup>3</sup>.
- Work occurring outside November 1 to January 15 of any year.

### **Repair/Maintenance of Structures in Navigable Waters:**

- Replacement of any non-serviceable structure.
- Repair/maintenance of a serviceable structure with expansion or change in use.

### **Moorings in Navigable Waters:**

- For non-private use, such as a state- or town-operated mooring.
- For commercial use, including rental use.
- For multiple-boat use.

---

<sup>1</sup> Waters of the U.S.: Include all Navigable Waters (see 2 below), all wetlands, all inland lakes, ponds, rivers, streams, etc.

<sup>2</sup> Navigable Waters: 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).

<sup>3</sup> Special Aquatic Sites: Include wetlands and salt marsh, mudflats, and vegetated shallows (subtidal areas that support rooted aquatic vegetation such as eelgrass).

**Floats and/or Pile-Supported Structures in Navigable Waters:**

- Pier greater than 1,000 s.f.
- Float greater than 200 s.f., if associated with a pier, greater than 400 s.f., if not associated with a pier.
- Float not supported off substrate.
- Above or through salt marsh or eelgrass.
- Associated with a boating facility.
- Within a distance of 3 times the depth of the Federal Navigation Project (e.g. within 18' of a 6' channel).
- For non-private use, such as a state- or town-owned structure.
- For commercial use.

**Miscellaneous:**

- Shellfish aquaculture projects.
- Any utility lines, aerial transmission lines, pipelines, outfalls, boat ramps, bridges, etc. in or effecting tidal or navigable waters.

## **U.S. Army Corps of Engineers Checklist for Applicants**

If your project meets any of the following, you must submit a copy of your completed Water Quality/Section 401 application to the U.S. Army Corps of Engineers, Regulatory Branch, 696 Virginia Road, Concord, MA 01742 for a Federal permit review. All projects authorized by the Corps under the Massachusetts Programmatic General Permit must not cause more than minimal adverse impacts. Projects with more than minimal adverse impacts require review under our Individual Permit program.

### **ALL PROJECTS:**

- Any impacts to a Federal Navigation Project.
- Environmental Impact Statement required by the Corps.

### **Fill (Temporary and Permanent) and Secondary Impacts cumulatively:**

- Greater than 5,000 s.f. of fill in inland wetlands<sup>1</sup> or waters.
- Any fill in tidal wetlands or navigable waters<sup>2</sup>.
- Dams, dikes, water withdrawals, or water diversions.
- In-stream work occurring outside July 15 to October 1 of any year.

### **Bank Stabilization:**

- Greater than 500 ft. in length.
- Greater than 1c.y. of fill per linear foot below ordinary high water (OHW).
- Any amount of wetland fill.
- Any stabilization in navigable waters.

### **Repair/Maintenance of Fill:**

- Replacement of non-serviceable fill.
- Repair/maintenance of serviceable fill with expansion or change in use.

### **Miscellaneous:**

- Any utility lines, aerial transmission lines, pipelines, outfalls, boat ramps, bridges, etc. in or effecting tidal or navigable waters.

---

<sup>1</sup> Wetlands must be delineated using Federal or state 3-parameter approach.

<sup>2</sup> Navigable Waters: 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).

4/12/99

Meeting w/ MA DEP

### 401 letter change

Lois said 1 region has done it, 2 regions will be doing it, 1 region has not responded to her message - Lois will meet with all regions later this week

### Ch. 91

John Simpson brought copies of application.  
- Corps will review

Jurisdiction?

Ch. 91 - MHW boundary  
- nontidal - OHW

We would just like to see Cat II projects  
John working on clock guidelines w/ EPA + NMFS  
Most of Ch. 91 apps. probably Cat. I.

→ John + Karen will talk to compare regs

Corps going to regional offices?

- staff and file availability
- ~95% of projects Cat. I.

Now 15-20 case reviews @ each Corps JP

### Tracking

- Don't record stuff from Concom's
- Vast majority of Cat. I's just @ Concom's
- DEP db tracks stuff that DEP issues, but small % of Cat I's, many buffer zone
- Could estimate based on Nat's filed

Look @ mit rept.  
done by DEP  
for some #'s

4/12/99

Meeting w/ MA DEP

### 401 letter change

Lois said 1 region has done it, 2 regions will be doing it, 1 region has not responded to her message - Lois will meet with all regions later this week

### Ch. 91

John Simpson brought copies of application.  
- Corps will review

Jurisdiction?

Ch. 91 - MHW boundary  
- nontidal - OTHW

We would just like to see Cat II projects  
John working on dock guidelines w/ EPA + NMFS  
Most of Ch. 91 apps. probably Cat. I.

→ John + Karen will talk to compare keys  
Corps going to regional offices?  
- staff and file availability  
- ~95% of projects Cat. I.

Now 15-20 case reviews @ each Corps JP

### Tracking

- Don't record stuff from Concom's
- Vast majority of Cat. I's just @ Concom's
- DEP db tracks stuff that DEP issues, but small % of Cat. I's, many buffer zone
- Could estimate based on Nat's filed

Look @ mit rept.  
done by DEP  
for some #'s

## Aquaculture

- LOP issued years ago, mainly for shell fish beds
  - inland: if Cat I. thresholds for discharge for intake + outfall structures are met
- talk to Grant about LOP for aquaculture
- break thresholds into Cat I + Cat II
- Write up draft

## C2M

- stormwater projects - consistent w/ state stormwater guidelines, now mandatory IP for Corps
- Jane - put these in Cat II, will get language to Jody

## Coordination

- Appl. to send indiv. 401 to Corps
  - Modify Chd1 letter too
- Interim - summary sheet formations to send to applicants along w/ file # notification form
- try to simplify list to < 1 page to be attached to applications
  - Karen + Lois to work on article to notify ConCom's + consultants
  - Pam to send draft dredging regs to Corps

3/30/09 - Meeting w/ Karen + Chris

CIA - Geographic distribution

size

- categories, ave.

Kinds of impacts

crossings?

→ RAMS - dump Project type

mention Cat. I's

Agenda? for meeting @ DEP

Vernal Pools - maybe only state certified pools

Open water disposal - Mass Bay

OK if No impacts to SAS

talk to CZM - call Eric to see where

around 20-25,000 cu. y. - maybe problem for CZM to Mass Bay

Docks 1:1 → check about Ch. 91 - would have

to rely on them

talk to John Simpson

ask for blank + filled out appls.

Procedure - Now says send NOI

to " 401

Ch. 91 appl. what are they getting

have list of what we want from meeting

Jurisdictional areas - check into this

- fix ahead of time

Dredging - coordination

what does DEP want

review of testing - what are they doing?

compare to what we do

# Applications for dredging

- Non sep. appl to corps  
Ch-91 will still have to apply for licensing  
will still do CEM  
try to get copies of Ch-91 appl.

↓ exactly what we need (+ HTL)

Ch-91 people in regional offices  
↳ regulates structures in Great Plains  
Corps could go to each office  
↳ to get applications

option

① DEP busy

DEP is database - tracking system?

< 5000 s.f. ?  
indiv. 401 ? can they pull these out?

↳ what do they track?  
" can we get?

Draft Δ's

give to Karen, state + Fed Agencies  
then out to notice

write letter to 401 + CEM asking them to accept.

how long to get certifications

→ sep. time in schedule - agencies to review draft

- 70 that haven't been constr.

Send draft to MACE  
DEP  
SARVIS

talk to Tim

RAM's query to get MAPPS  
name + address on a label

send cards to see if constr.

Grandfathering issues



3/30/99

RA's to  
wetland  
review

For dredging info - send to

Matt } wetlands

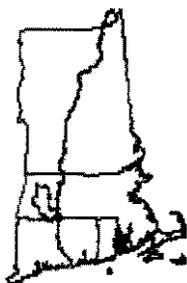
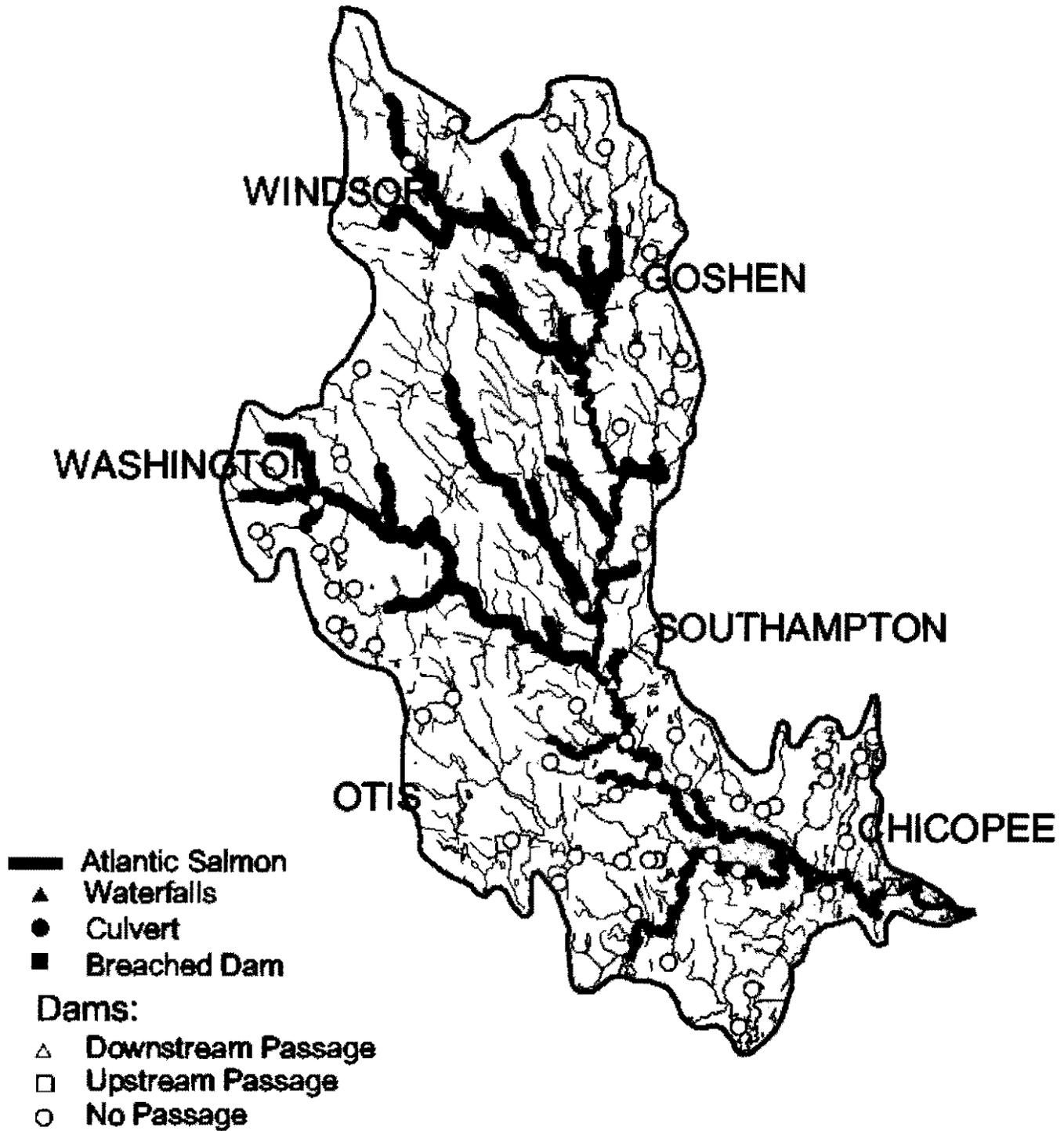
Ed

Roger Jantzen } water quality

Dave Tronney

@EPA

# Westfield Subdrainage of the Connecticut River



Map by :  
U.S. Fish and Wildlife Service  
Connecticut River Coordinator's Office  
103 East Plumtree Road  
Sunderland, MA 01375

April, 1999

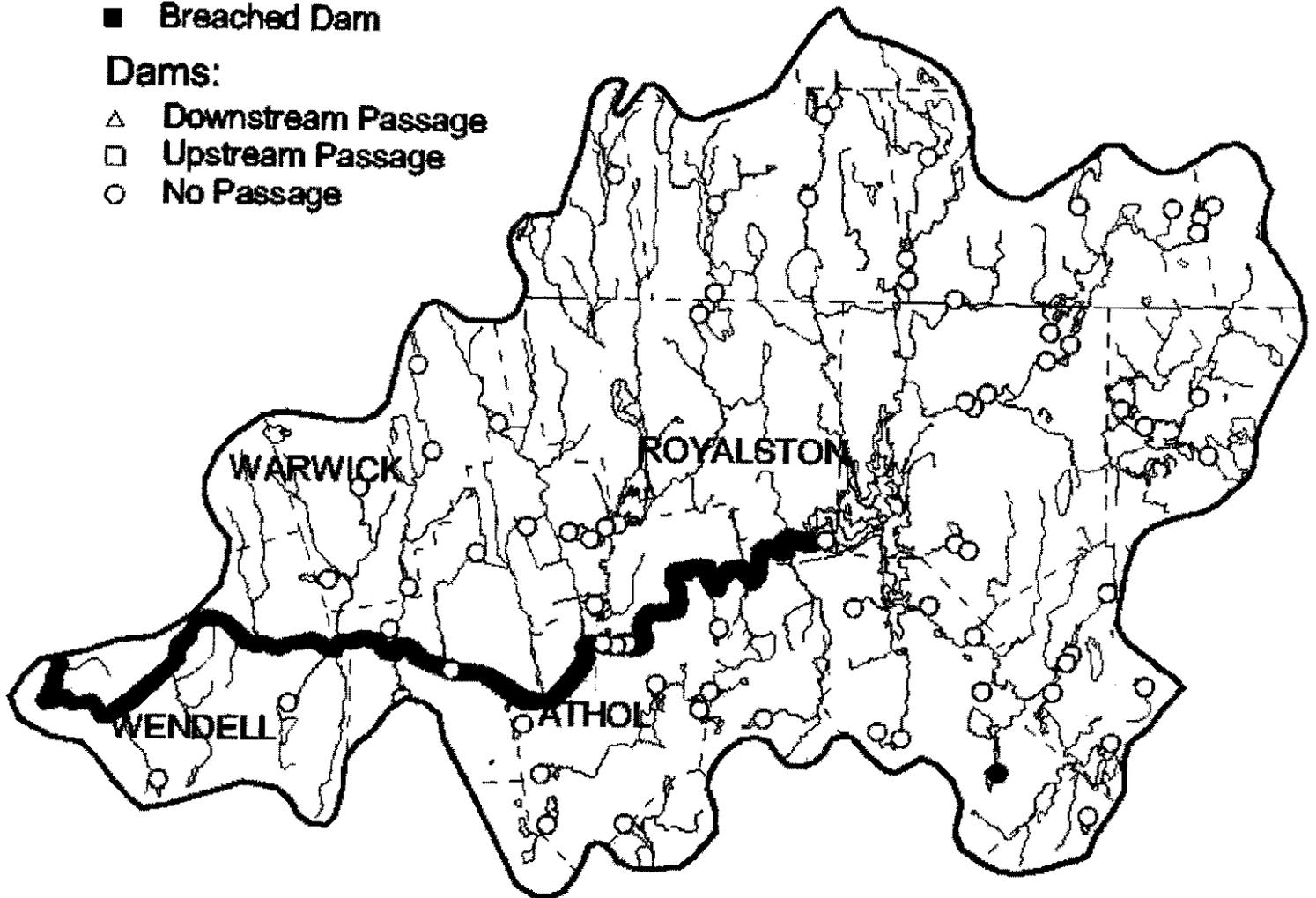


# Millers River Subdrainage of the Connecticut River

- Atlantic Salmon
- ▲ Waterfalls
- Culvert
- Breached Dam

## Dams:

- △ Downstream Passage
- Upstream Passage
- No Passage

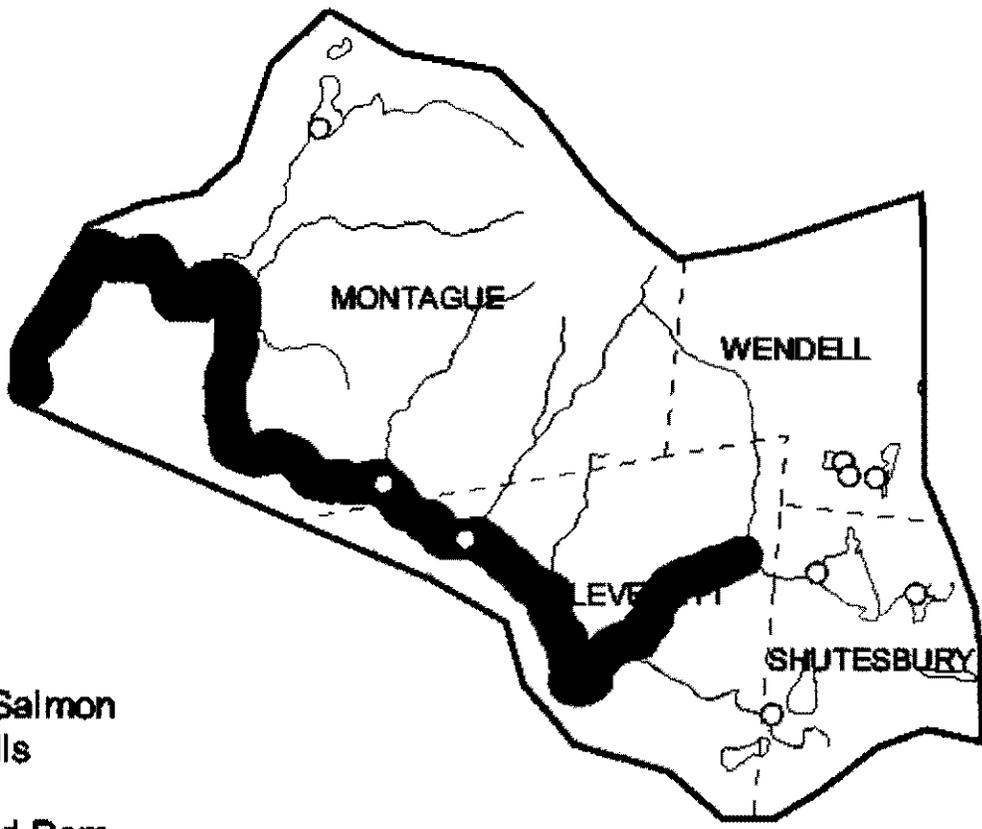


Map by :  
U.S. Fish and Wildlife Service  
Connecticut River Coordinator's Office  
103 East Plumtree Road  
Sunderland, MA 01375

April, 1999



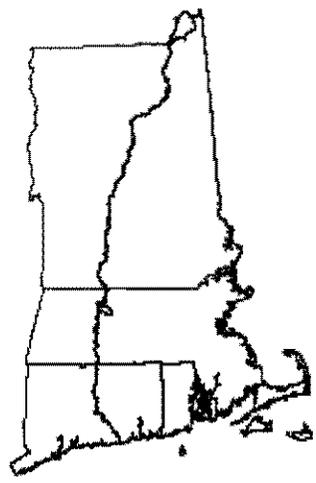
# Sawmill River Subdrainage of the Connecticut River



- Atlantic Salmon
- ▲ Waterfalls
- Culvert
- Breached Dam

**Dams:**

- △ Downstream Passage
- Upstream Passage
- No Passage

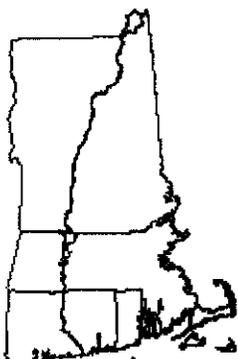
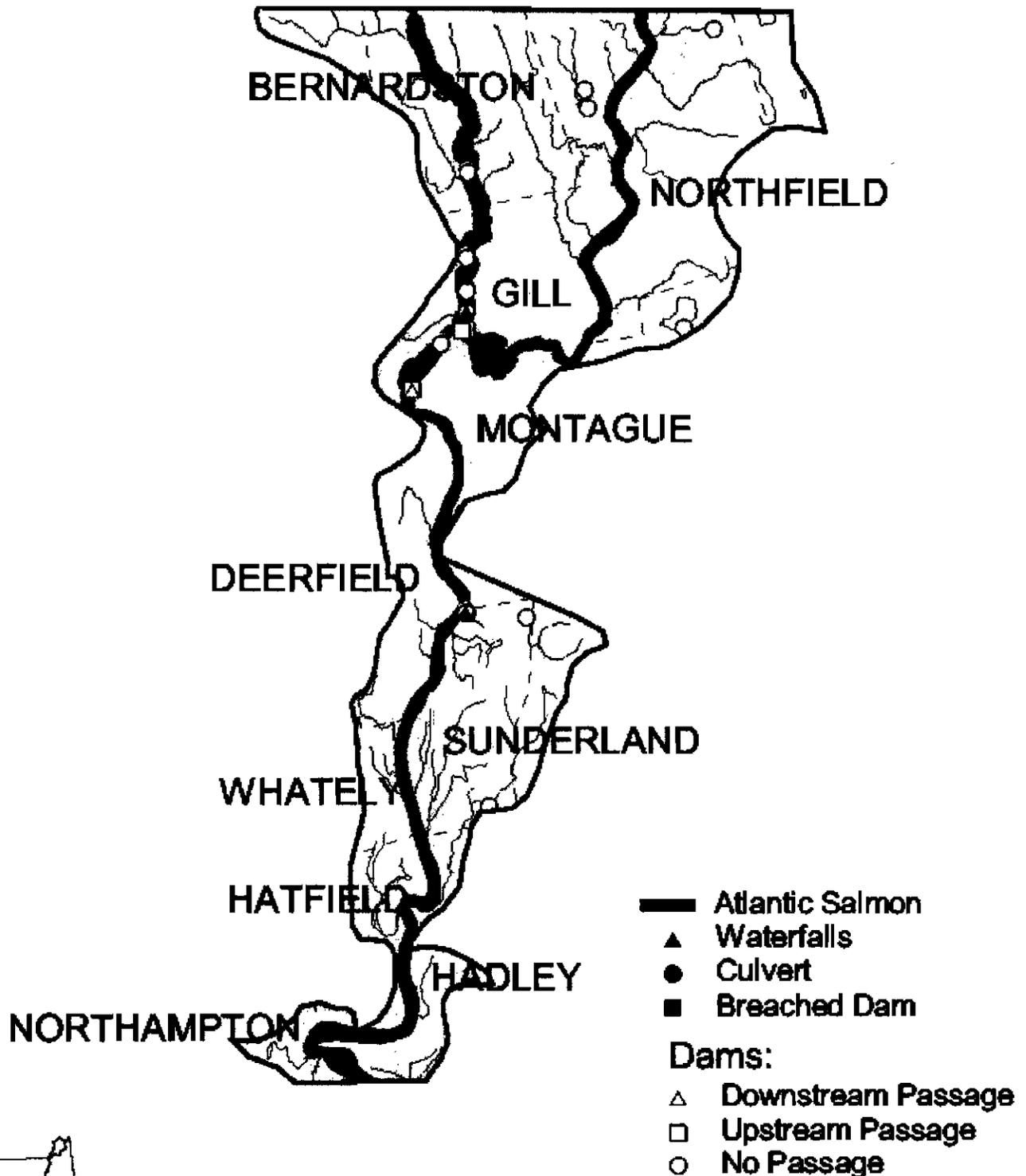


Map by :  
 U.S. Fish and Wildlife Service  
 Connecticut River Coordinator's Office  
 103 East Plumtree Road  
 Sunderland, MA 01375

April, 1999



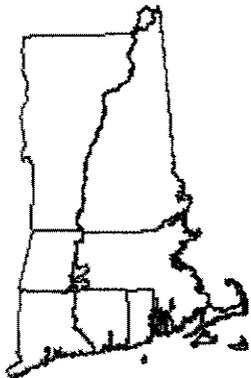
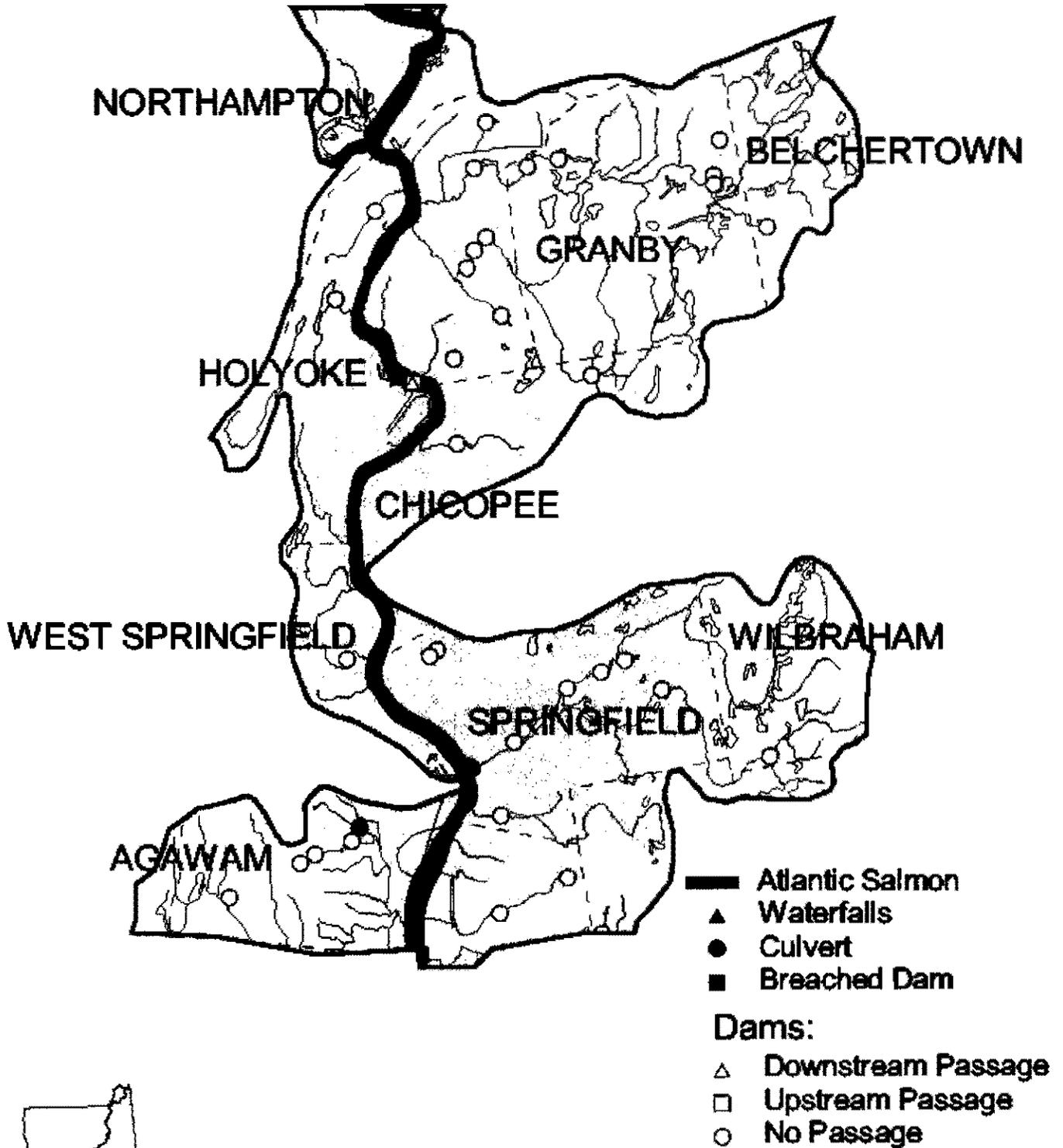
# Connecticut River in Northern Massachusetts



Map by:  
U.S. Fish and Wildlife Service  
Connecticut River Coordinator's Office  
103 East Plumtree Road  
Sunderland, MA 01375



# Connecticut River in Southern Massachusetts

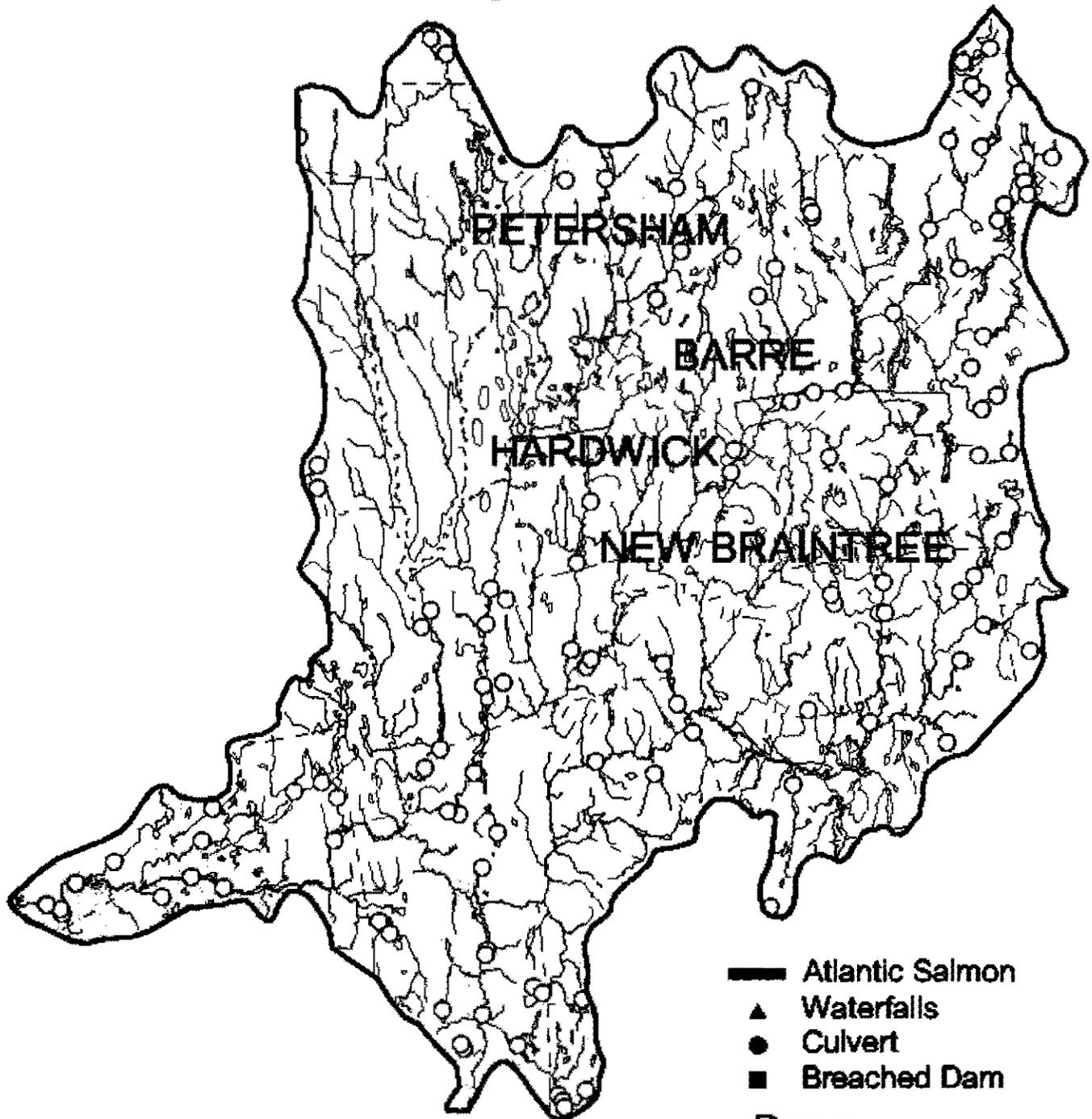


Map by :  
 U.S. Fish and Wildlife Service  
 Connecticut River Coordinator's Office  
 103 East Plumtree Road  
 Sunderland, MA 01375

April, 1999



# Chicopee Subdrainage of Connecticut River



— Atlantic Salmon

▲ Waterfalls

● Culvert

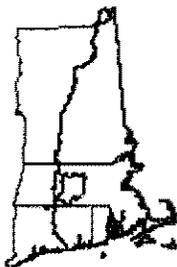
■ Breached Dam

Dams:

△ Downstream Passage

□ Upstream Passage

○ No Passage

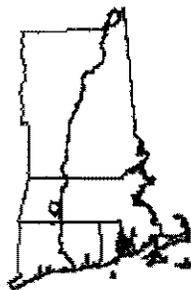
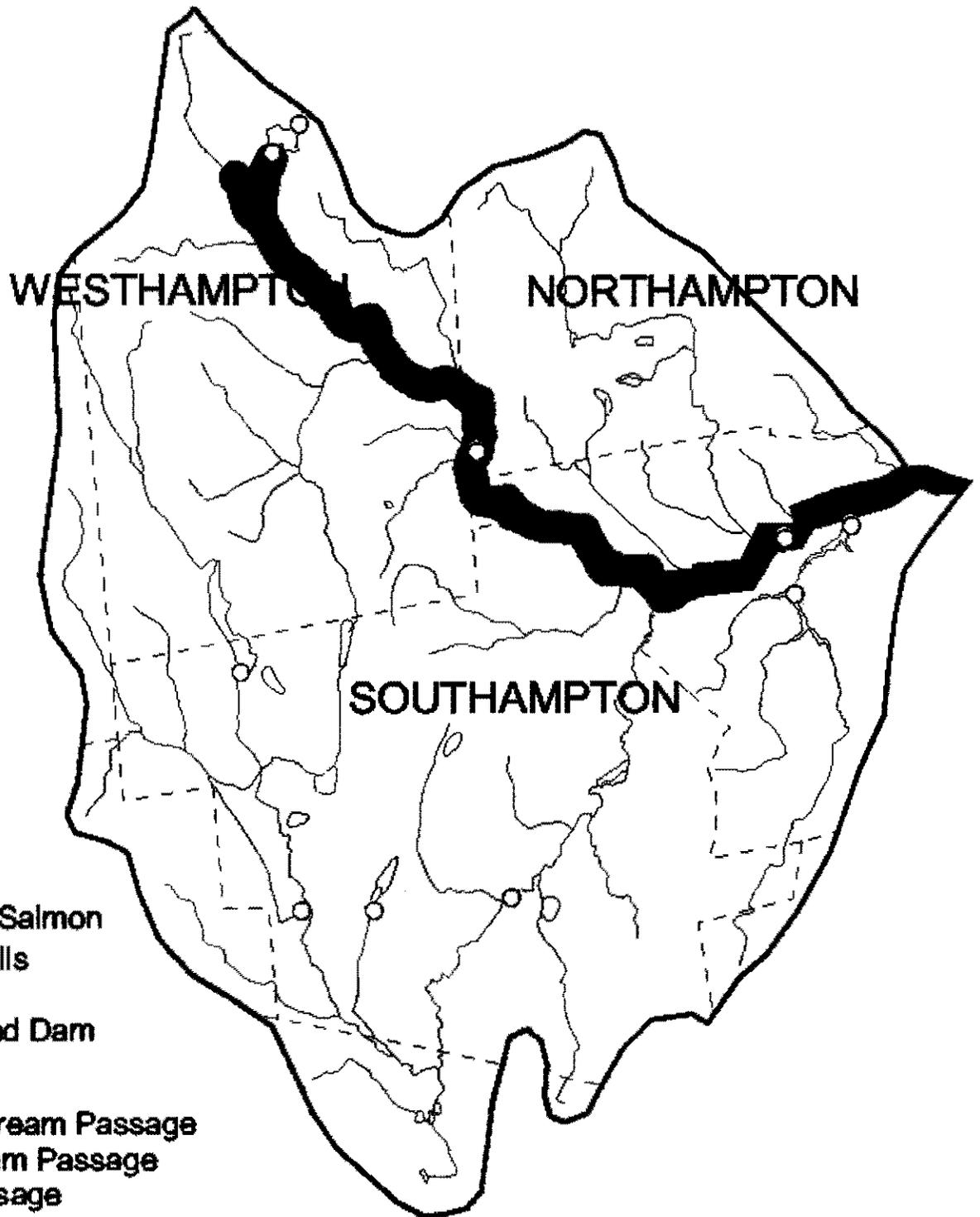


U.S. Fish and Wildlife Service  
Connecticut River Coordinator's Office  
103 East Plumtree Road  
Sunderland, MA 01375

February, 1999



# Manhan Subdrainage of the Connecticut River



Map by:  
U.S. Fish and Wildlife Service  
Connecticut River Coordinator's Office  
103 East Plumtree Road  
Sunderland, MA 01375

April, 1999



# Fort River Subdrainage of the Connecticut River

— Atlantic Salmon

▲ Waterfalls

● Culvert

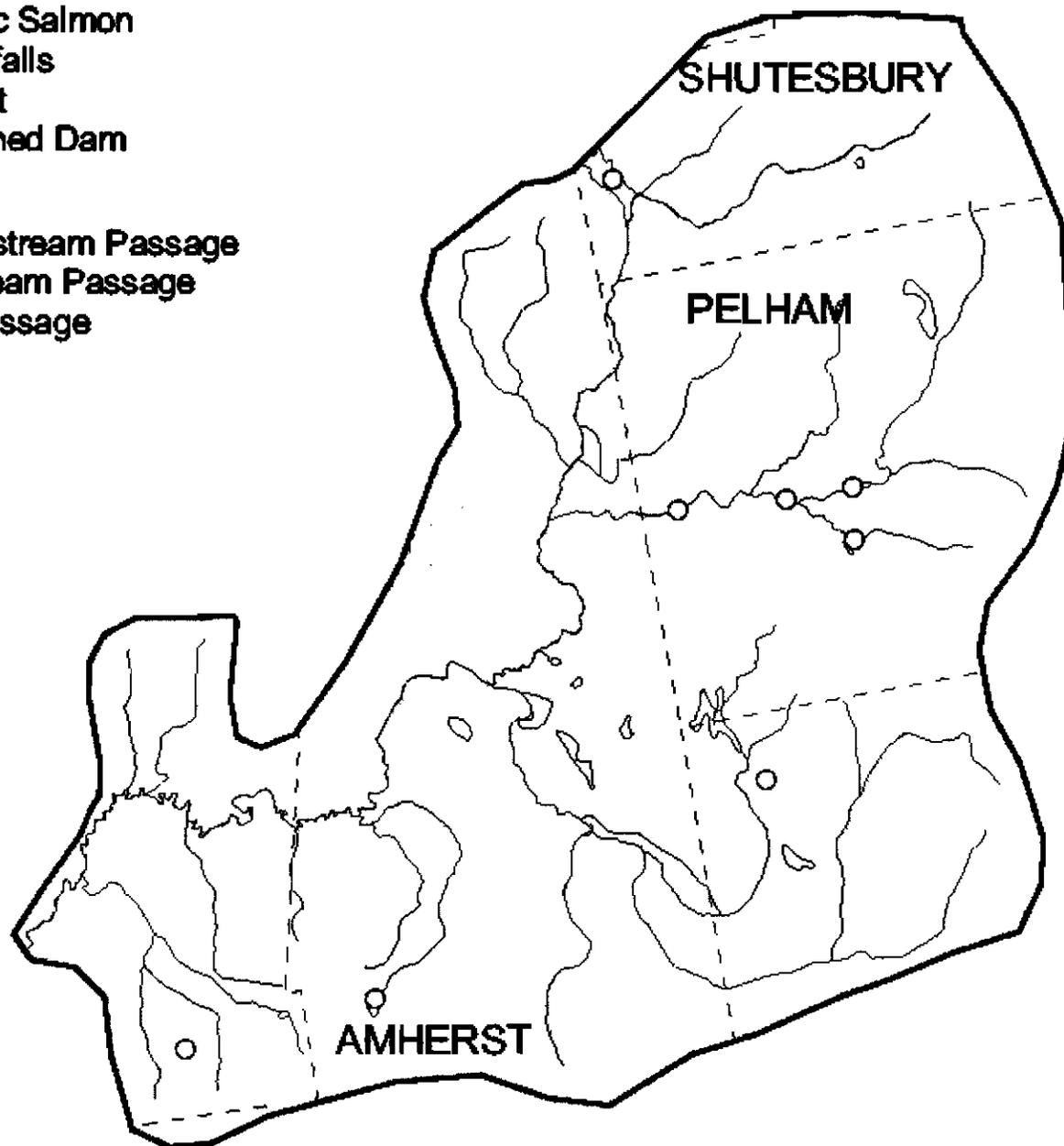
■ Breached Dam

Dams:

△ Downstream Passage

□ Upstream Passage

○ No Passage

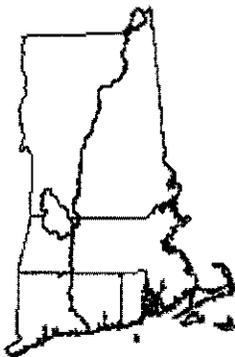
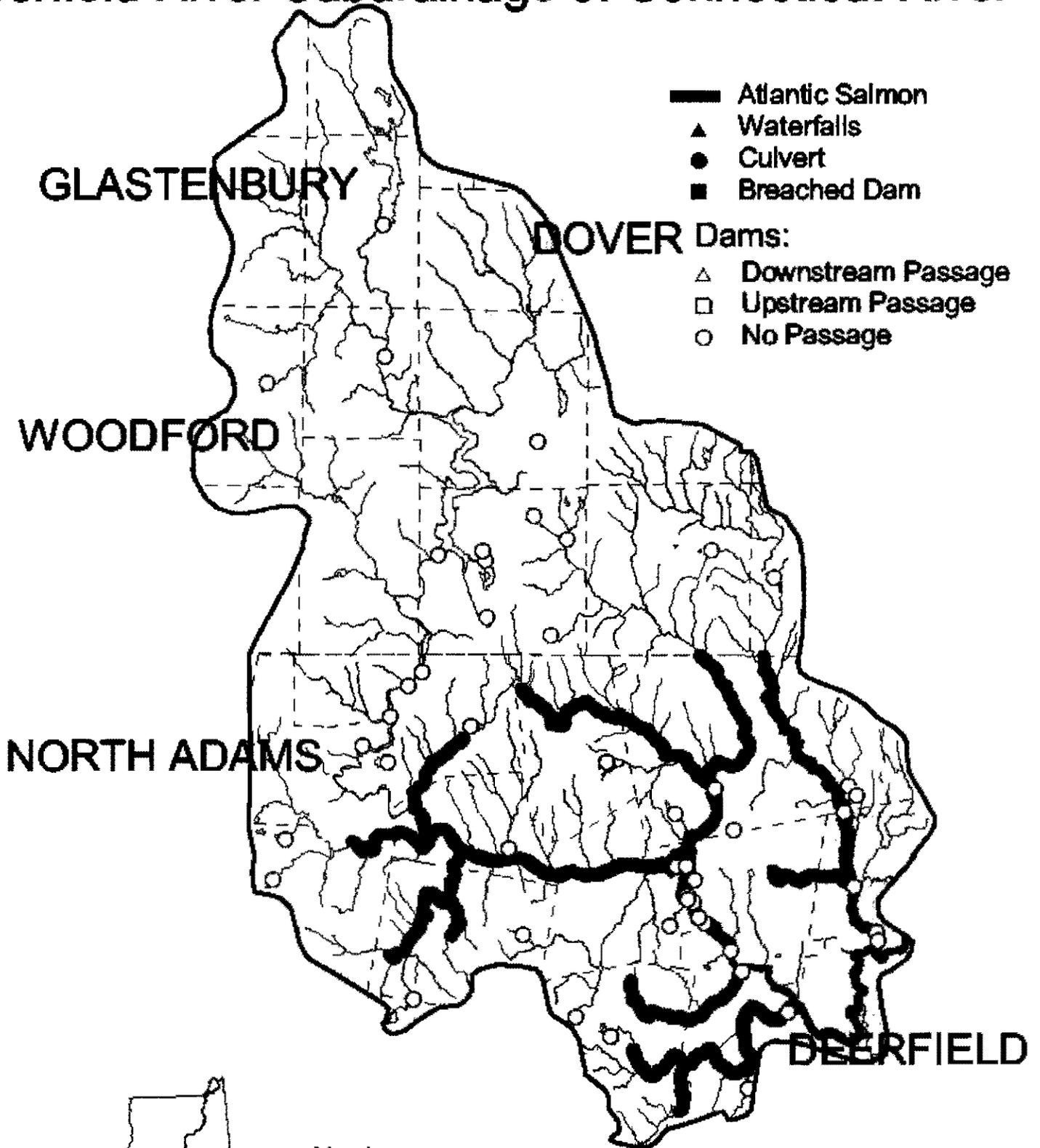


Map by :  
U.S. Fish and Wildlife Service  
Connecticut River Coordinator's Office  
103 East Plumtree Road  
Sunderland, MA 01375

April, 1999



# Deerfield River Subdrainage of Connecticut River

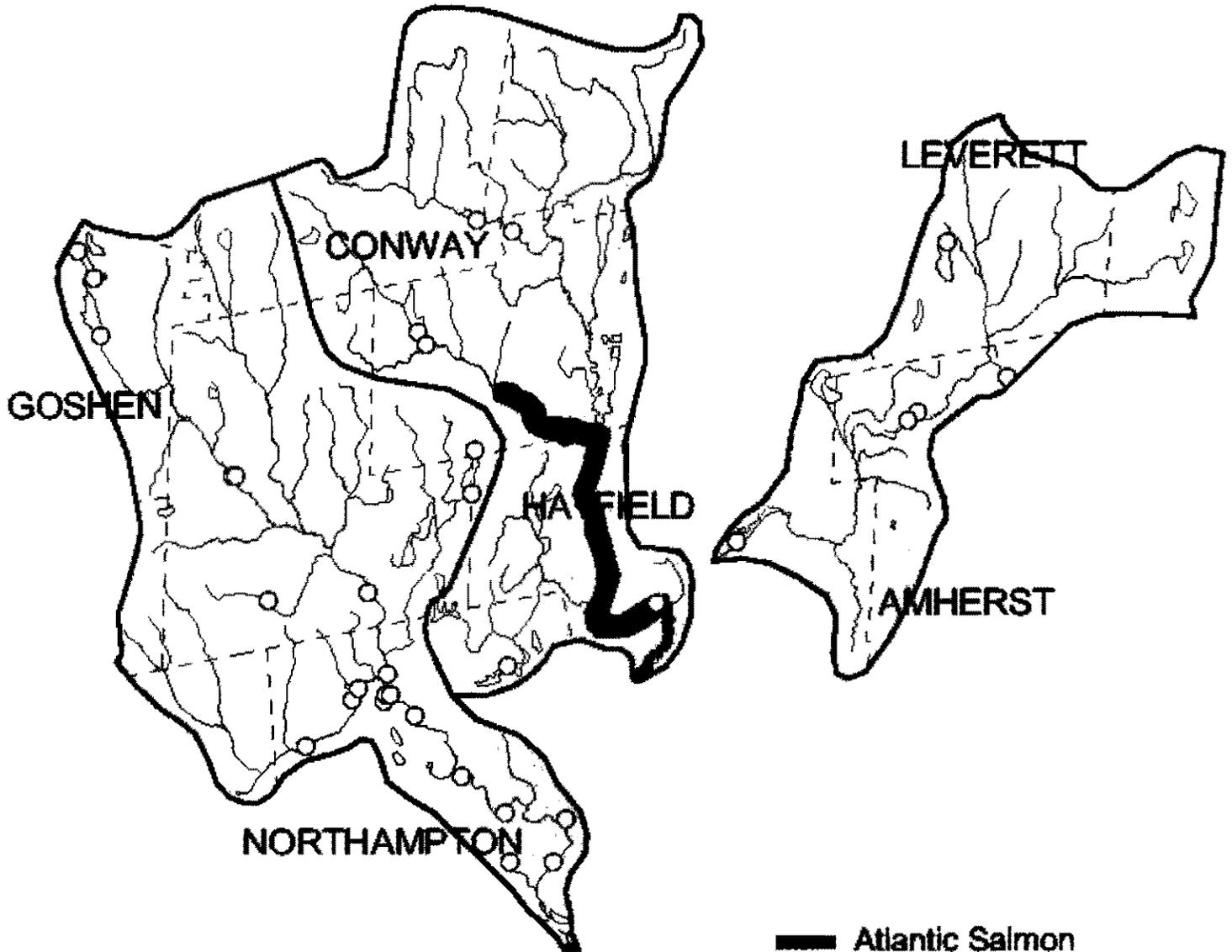


Map by :  
U.S. Fish and Wildlife Service  
Connecticut River Coordinator's Office  
103 East Plumtree Road  
Sunderland, MA 01375

April, 1999



# Mill River Subdrainages of the Connecticut River



- Atlantic Salmon
- ▲ Waterfalls
- Culvert
- Breached Dam

### Dams:

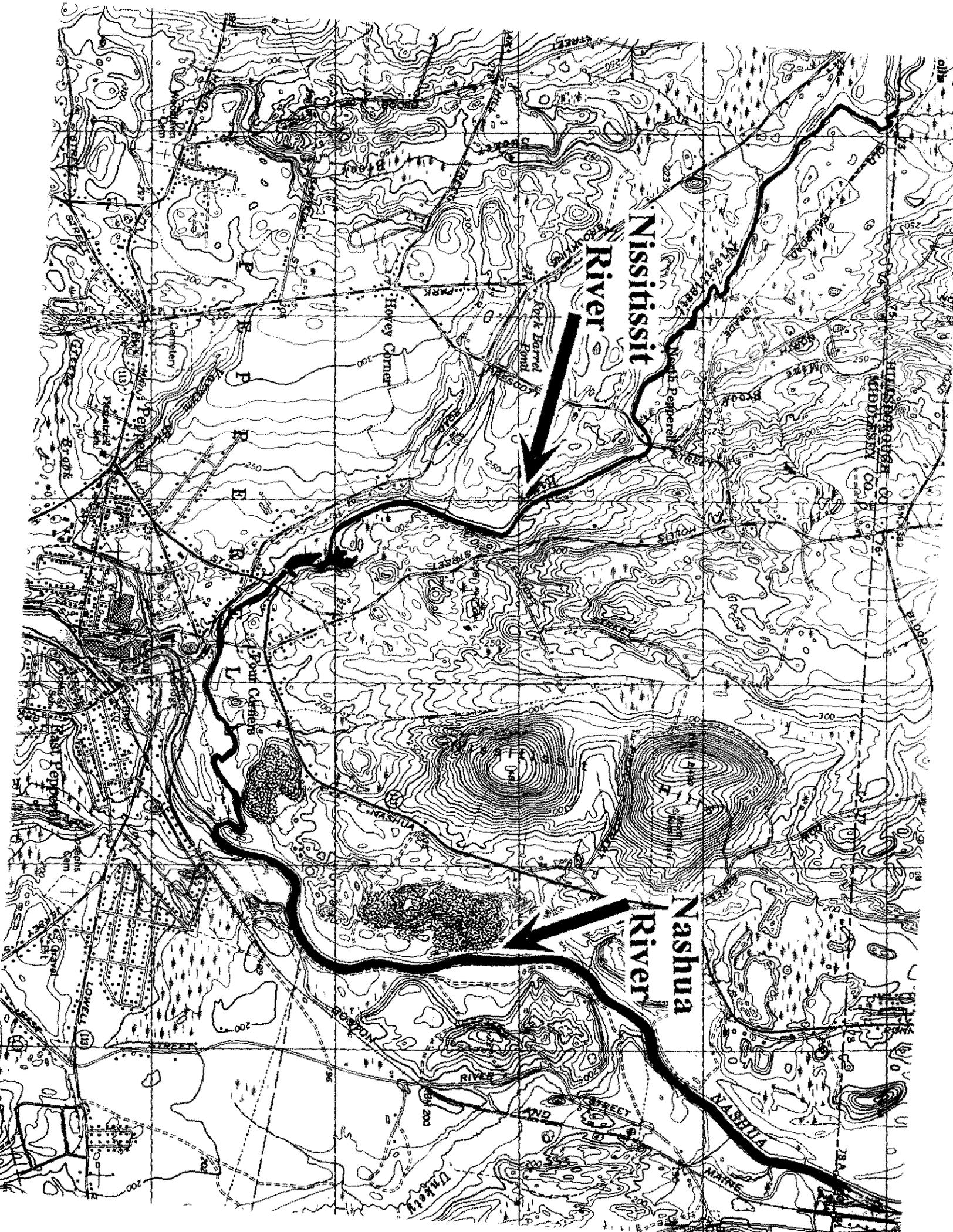
- △ Downstream Passage
- Upstream Passage
- No Passage



Map by :  
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Connecticut River Coordinator's Office  
103 East Plumtree Road  
Sunderland, MA 01375

April, 1999

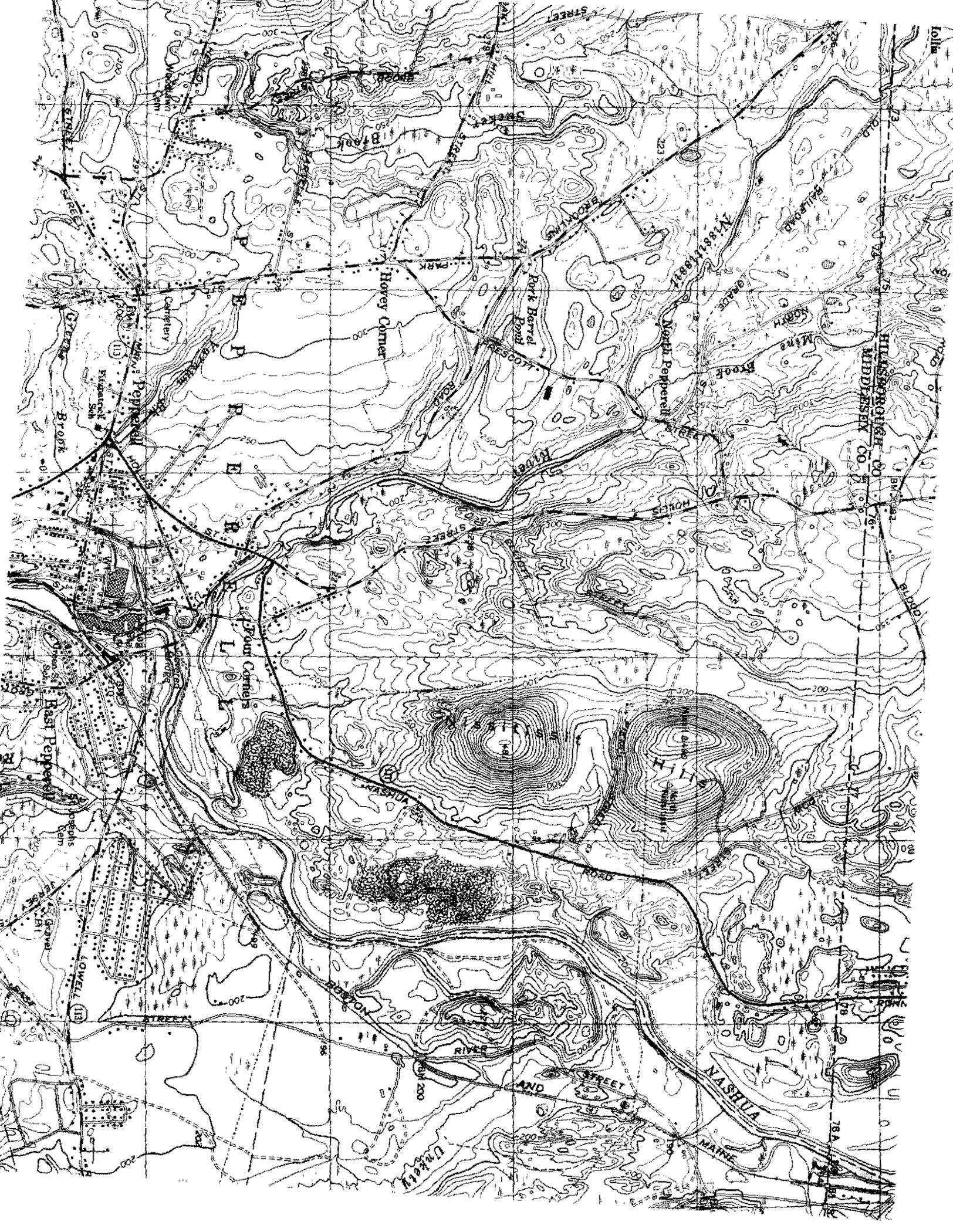




Nissitissit River

Nashua River

HILLSBOROUGH CO. MASS. JAIL ADDRESS CO. N.H.





DEPARTMENT OF THE ARMY  
NORTH ATLANTIC DIVISION, CORPS OF ENGINEERS  
90 CHURCH STREET  
NEW YORK, N.Y. 10007-2979

IN REPLY REFER TO

CENAD-ET-0

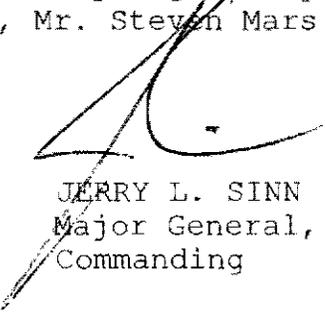
JUL 31 1997

MEMORANDUM FOR Commander, New England District

SUBJECT: Revocation of Nationwide Permits (NWPs) in New Hampshire

1. Reference your memorandum dated 27 May 1997, subject: Revocation of Nationwide Permits (NWPs) in New Hampshire.
2. Based on the authority given to me at Title 33 CFR Part 330.4 (e) and .5, I have determined that it would be in the public interest to revoke the NWPs, based upon and as described in the attached Statement of Findings (SOF), for the State of New Hampshire. The attached SOF details the revocations of the NWPs.
3. The Nationwide Permits are being revoked in New Hampshire to reduce duplication and potential confusion for the regulated public, because the New Hampshire Statewide Programmatic General Permit (NH SPGP), which was implemented on 2 June 1997, is available to authorize these same activities.
4. Would you please provide my office with a copy of your Public Notice, as stated in 33 CFR Part 330.5(c)(2), announcing the effective date of this suspension action.
5. Should you have any questions regarding this action, please have your staff call my Regulatory and Natural Resource Program Manager, Mr. Steven Mars at 212-264-7535.

Atch

  
JERRY L. SINN  
Major General, USA  
Commanding

CENAD-ET-O (1145)

MEMORANDUM FOR RECORD

SUBJECT: Authorization to Proceed with the Revocation of Nationwide Permits in the State of New Hampshire - Statement of Findings

1. PROPOSAL. On 8 April 1997, the New England District Corps of Engineers issued a public notice proposing to reissue the State of New Hampshire Programmatic General Permit (NH SPGP) and revoke the NWPs on a statewide basis in New Hampshire. After consideration of public and agency comments, it is recommended the North Atlantic Division revoke the NWPs in the State of New Hampshire and replace them with the NH SPGP.

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(c). The Division Engineer may use his discretionary authority to modify, suspend, or revoke NWP authorizations for any specific geographic area, including on a statewide basis, by issuing a public notice or notifying the individuals involved. A public notice was issued on 8 April 1997.

3. COMMENTS RECEIVED. In response to the 8 April 1997 public notice, a letter from the New Hampshire Department of Transportation was received stating that they were in support of the revocation of all Nationwide Permits in New Hampshire and the reissuance of the NH SPGP. The Federal Resource Agencies (U.S. Environmental Protection Agency, U.S. Fish and Wildlife Service and National Marine Fisheries Service) also support the revocation of all Nationwide Permits in New Hampshire. This suspension decision reflects the contents of the administrative record which is maintained at New England District.

4. SUMMARY AND DECISION. Revocation of the NWPs in New Hampshire is necessary to reduce duplication and potential confusion for the regulated public. The NH SPGP, which was implemented on 2 June 1997, is available to authorize these same activities. This action revokes all of the NWPs published in the 13 December 1996 issue of the federal register.

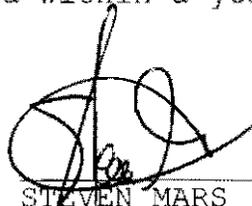
5. REVIEW OF ACTION. The Division Engineer retains the right to review the effect of this action and to revise or rescind this decision if the public interest warrants. Unless

CENAD-ET-0

SUBJECT: Authorization to Proceed with the Revocation of Nationwide Permits in the State of New Hampshire - Statement of Findings

specifically revised or rescinded by the Chief of Engineers or Division Engineer, this decision will remain in effect until the NWPs, issued on 13 December 1996 expire (11 February 2002).

6. IMPLEMENTATION. It is recommended that the Commander for the North Atlantic Division, exercise his authority [as promulgated at 33 CFR Part 330.4(e)] and revoke the use of all Nationwide permits, as described above and forward his recommendation to the Commander, New England District. This action is in the Public's interest and will ensure that the goals of the NH SPGP are met. This suspension decision will be effective on the date it is announced in a Public Notice, as stated in 33 CFR Part 330.5(c)(2). All pending NWP verification requests received before the date of signature, or projects approved before the date of signature, pursuant to the NWPs issued on 13 December 1996, are grandfathered. In order to be grandfathered, projects that have a written verification from the Corps of Engineers continue to be authorized until the verification expires. For projects that meet the terms and conditions of non-reporting NWP activities, project proponents must have commenced construction or be under contract to commence construction before the date this document is signed, and the work must be completed within a year.



STEVEN MARS

24 July 97

\_\_\_\_\_  
Date  
Regulatory and Natural Resource  
Program Manager