



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

696 Virginia Road
Concord, MA 01742-2751

PUBLIC NOTICE

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

The New England District, U.S. Army Corps of Engineers, 696 Virginia Road, Concord, MA 01742-2751 hereby announces the reissuance of the statewide Massachusetts Programmatic General Permit (PGP), pursuant to 33 CFR Part 325.5(c)(3), for minimal-impact activities within the Commonwealth of Massachusetts. The existing PGP expired on January 11, 2005. The reissued Massachusetts PGP continues the expedited review process for activities in Corps jurisdiction under Section 404 of the Clean Water Act, Section 10 of the Rivers and Harbors Act of 1899 and Section 103 of the Marine Protection, Research, and Sanctuaries Act. This public notice is issued in accordance with 33 CFR 325.10 to assure potential applicants for permits are informed of the requirements of 33 CFR 320-330 and of the steps required to obtain permits for activities in waters of the U.S. or ocean waters.

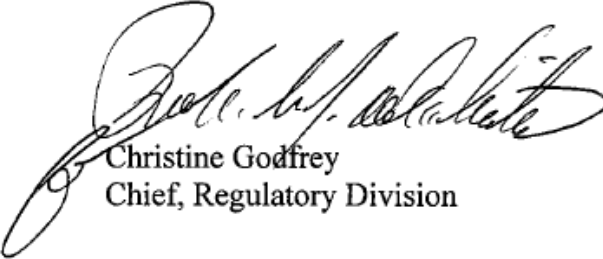
General permits are encouraged under the President's plan to streamline state and Federal regulatory programs. The New England District has already had success with streamlining these programs through the use of general permits throughout New England. This PGP is designed to authorize activities formerly covered under the Nationwide Permit (NWP) program and the prior PGP that expired on January 11, 2005. This reissued PGP became effective on January 20, 2005. Continued utilization of the general permit process in place of the NWP's will provide important benefits to the public, including simplifying the process, expediting decisions, and providing necessary environmental protection.

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

All PGP authorizations will be subject to the applicability requirements, procedures, and conditions contained in the PGP document. Project eligibility under this PGP will fall into two categories: non-reporting projects (Category 1) and reporting projects requiring screening (Category 2). The Corps and the Federal resource agencies (U.S. Fish and Wildlife Service, U.S. Environmental Protection Agency and National Marine Fisheries Service) will review Category 2 activities as described in the PGP. 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.

The new PGP supercedes the previous PGP but does not affect activities authorized under the previous PGP that have commenced prior to the expiration date of the previous PGP. An authorized activity which has commenced (i.e., is under construction or is under contract to commence) prior to the expiration date of the previous PGP (January 11, 2005), 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 previous PGP's expiration date for Category 1 projects, or in accordance with specific expiration requirements contained in the Corps PGP authorization letter for Category 2 projects.

You can view the Massachusetts PGP on our web site at <http://www.nae.usace.army.mil>. Please go to "Regulatory/Permitting", "Programmatic General Permits" and then "Massachusetts". Major changes to the PGP are detailed on sheets enclosed with this Public Notice. Please contact Mr. Penta at (978) 318-8862 or gregory.r.penta@usace.army.mil for more information or a copy of the PGP.



Christine Godfrey
Chief, Regulatory Division

Enclosure

1. GENERAL CHANGE:

Page 1, General Criteria, and Page 2, Category 1, were clarified with these italicized words, ~~provided required local and State permits and required State certifications are received~~ *provided the authorizations are obtained which this permit states are necessary for activities to be eligible for authorization under this non-reporting category.*

Page 3, Application Procedures. The state documents that applicants may submit in lieu of a Corps of Engineers application form were clarified.

Page 4, Information typically required.

- The following wording was modified, “The following information may not be necessary for all projects. Please see www.nae.usace.army.mil for a more comprehensive checklist. Select “Regulatory/ Permitting,” “Forms” and then “Application and Plan Guideline Checklist.” Please check with our office for project-specific requirements.”
- We will require that all plans now show the NGVD 1929 equivalent for a project’s vertical datum (MHW, MLW, MLLW or other tidal datum for tidal projects) with the vertical units, and that plans not use a local datum.

2. GENERAL PERMIT CONDITIONS:

General Condition 3. Minimal Effects. These italicized words were added for clarity, “Projects authorized by this PGP shall have *no more than* minimal individual and cumulative adverse environmental impacts as determined by the Corps”.

General Condition 5. Single and Complete Projects. Language from the NWP’s pertaining to single and complete projects was added. General Condition 5 now states, “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, unless the Corps determines that a component has independent utility”. Independent utility is defined in General Condition 5.

General Condition 11. Wild and Scenic Rivers. The designated reach of the Westfield River was changed to reflect an October 2004 designation change by the National Park Service, and the last sentence of this condition was changed to reflect changes to the Taunton River’s status.

General Condition 16. Heavy Equipment in Wetlands. This condition was modified to allow equipment in wetlands that have low ground pressure (<3 psi) as impacts are typically minimal. “*Swamp or timber*” was added before “mats” for clarification. This italicized wording was added as removing equipment daily could cause more damage in some instances, “Heavy equipment...shall not be stored, maintained or repaired in wetlands, *unless it is less environmentally damaging otherwise...*” The GC 17 was referenced and swamp and timber mats, and corduroy roads were defined.

General Condition 17. Temporary Fill. We now consider swamp and timber mats as fill in accordance with the Corps new definition of fill material in the May 9, 2002 Federal Register. Accordingly, this now states, “Swamp or timber mats (see 16 above) are considered as temporary fill when they are removed immediately upon work completion”.

General Condition 19. Coastal Bank Stabilization. This condition was modified since the August 2004 Public Notice. This condition is now more detailed in its requirement for the design of coastal structures to minimize environmental effects, including effects to neighboring properties, scour, etc. to the maximum extent practicable.

General Condition 21. Waterway Crossings. Paragraphs b and c were inserted. This now requires new permanent crossings to conform with the General Standards contained in the August 6, 2004 Massachusetts River and Stream Crossing Standards: Technical Guidelines. For these crossings, open bottom arches, bridge spans or embedded culverts are generally preferred over traditional culverts and are required for Category 1 projects. If impractical, review under the Category 2 or the IP process is required.

General Condition 23. Spawning Areas. Add these italicized words “Discharges *and/or suspended sediment producing activities* 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.”

General Condition 24. Storage of Seasonal Structures. Add the following italicized words, “Coastal structures, such as pier sections and floats, that are removed from the waterway for a portion of the year (*often referred to as seasonal structures*) shall be stored in an upland location, located above mean high water (MHW) and not in tidal wetlands. *These seasonal structures may be stored on the fixed, pile-supported portion of the structure that is seaward of MHW. The intent of this condition is to prevent structures from being stored on the marsh substrate and the substrate seaward of MHW.*”

General Condition 27. Maintenance. This was modified for clarity, to more accurately reflect various provisions in our regulations, and to include a reference to a letter containing information on maintaining mosquito ditches.

3. CONTACTS FOR PROGRAMMATIC GENERAL PERMIT:

The contact list beginning on Page 18 was modified to add related websites and e-mail addresses. The websites for some of these contacts can be found on our website at <http://www.nae.usace.army.mil>. Please go to “Regulatory/ Permitting” and then click “Useful Links.”

4. AQUACULTURE GUIDELINES

The Massachusetts Historic Commission (MHC) requested we not require applicants to notify MHC for aquaculture projects, as stated in the PGP’s application procedures on Page 3, since these projects are unlikely to affect historic or archaeological resources. The following paragraph was added to the Aquaculture Guidelines, which begin on Page 21 of the PGP:

J. Aquaculture applicants do not need to notify the Massachusetts Historical Commission as stated in the application procedures on Page 3 of this document since these projects are unlikely to affect historic or archaeological resources.

5. APPENDIX A - DEFINITION OF CATEGORIES

I. Inland Waters and Wetlands. The definition was modified to more accurately state Corps jurisdiction and the areas we review under the Inland Waters and Wetlands section.

I. Inland Waters and Wetlands, (a) New Fill/Excavation Discharges, Categories 1, 2 and Individual Permit. Secondary impact areas now include *excavated* areas, in addition to the “drained, flooded, or cleared” areas. This agrees with the NWP’s. The term “Impact area” was changed to “Fill area” for clarification.

I. Inland Waters and Wetlands, (a) New Fill/Excavation Discharges, Categories 1 and 2

Swamp mats are now counted towards the overall square footage of impacts when determining whether a project qualifies for Category 1 or 2. Swamp mats filling any area $\geq 5,000$ SF are reviewed in Category 2, and will not necessitate Individual Permit (IP) review unless the project’s other impacts total greater than 1 acre or the Corps determines the impacts are greater than minimal.

I. Inland Waters and Wetlands, (a) New Fill/Excavation Discharges, Category 1

This category states, “Provided: New permanent stream crossings shall consist of open bottom arches, bridge spans, or embedded culverts. See General Condition 21”.

I. Inland Waters and Wetlands, (a) New Fill/Excavation Discharges, Category 2

1. The proactive restoration wording was changed to clarify what we consider as proactive restoration: “Projects with proactive restoration as a primary purpose with impacts of any area $\geq 5,000$ SF. The Corps, in consultation with State and Federal agencies, must determine that net adverse effects are not more than minimal”.

2. Similar to NWP 38, we added the following to streamline hazardous waste remediation project review by avoiding IP’s: “Specific activities with impacts of any area $\geq 5,000$ SF required to affect the containment, stabilization, or removal of hazardous or toxic waste materials that are performed, ordered, or sponsored by a government agency with established legal or regulatory authority. Wetlands must be restored in place”.

I. Inland Waters and Wetlands, (b) Bank Stabilization, Category 1

The threshold for bank stabilization projects was changed from 500 feet to 100 feet. This now states, “No structures angled steeper than 3H:1V allowed. Only rough-faced stone or fiber roll revetments allowed”.

I. Inland Waters and Wetlands, (c) Repair and Maintenance of Authorized Fills, Category 1 and

II. Navigable Waters, (b) Repair and Maintenance Work, Category 1.

1. Section I now states, “*Conditions of the original authorization apply, however minor deviations in fill design allowed¹¹”. Section II states, “*Must be rebuilt in same footprint, however minor deviations in structure design allowed¹¹”.

2. Endnote 11 was added, which is similar to NWP 3. This was added as encouraging proponents to build coastal engineering structures in the same footprint can discourage the reduction of the adverse impacts of the structure, made possible through technology and better understanding of coastal processes.

¹¹ Minor deviations in the structure’s configuration or filled area including those due to changes in materials, construction techniques, or current construction codes or safety standards which are necessary to make repair, rehabilitation, or replacement are permitted, provided the adverse environmental effects resulting from such repair, rehabilitation, or replacement are minimal. Currently serviceable means useable as is or with some maintenance, but not so degraded as to essentially require reconstruction”.

II. Navigable Waters. The definition was modified to more accurately state Corps jurisdiction and the areas we review under the Navigable Waters section.

II. Navigable Waters, (a) Fill, Category 1.

Wording similar to that in NWP 15 was added. This will reduce the regulatory burden on the public associated with applying to two agencies.

“Discharges of dredged or fill material incidental to the construction of bridges across navigable waters of the United States, including cofferdams, abutments, foundation seals, piers, and temporary construction and access fills, provided the U.S. Coast Guard authorizes such discharges as part of the bridge permit. Causeways and approach fills are not included in this category and require Category 2 or Individual Permit review”.

II. Navigable Waters, (a) Fill, Category 2.

1. This previously stated: “Up to 1 acre fill and/or secondary waterway and wetland impacts (e.g., areas drained or flooded). Fill includes temporary and permanent waterway fill”. Since wetlands are considered as a special aquatic site (SAS), as stated in Endnote 5 of the PGP, this contradicts the following statement in the same category, “No permanent fill and/or excavation in SAS”. Therefore, “and wetland” is removed from the statement above.

2. The proactive restoration wording was changed to clarify what we consider as proactive restoration: “No permanent fill and/or excavation in SAS⁵ except when associated with a project with proactive restoration as a primary purpose with any amount of impact. The Corps, in consultation with Federal & state agencies, must determine that net adverse effects are not more than minimal”.

3. Similar to NWP 38, this now states, “Specific activities with impacts of any area required to affect the containment, stabilization, or removal of hazardous or toxic waste materials that are performed, ordered, or sponsored by a government agency with established legal or regulatory authority. Wetlands must be restored in place”.

II. Navigable Waters, (c) Dredging, Category 1

The following exclusions were added:

- No dredging in intertidal areas.
- No dredging in Areas of Critical Environmental Concern (ACEC’s). The MA Secretary of Environmental Affairs designates ACEC’s and lists them at <http://www.mass.gov/dem/programs/acec/>.

II. Navigable Waters, (c) Dredging, Category 2

Beach nourishment of any amount if sand is from an upland source is now allowed, and it was clarified that confined aquatic disposal is allowed in Category 2. The italicized words were added:

- Disposal includes: *1.upland; 2.beach nourishment of any area provided dredging’s primary purpose is navigation or sand is from an upland source and Corps, in consultation w/Federal and State agencies, determines the net adverse effects are not more than minimal; and 3.open water & confined aquatic disposal*, if Corps, in consultation with Federal and State agencies, finds the material suitable.

II. Navigable Waters, (c) Dredging, Category

Only dredging for navigational purposes may be authorized in Cat 1.

II. Navigable Waters, (e) Pile-Supported Structures and Floats, Category 1

The following qualifiers were added at the request of the Massachusetts Office of CZM:

1. "Floats supported at least 2.5' above the substrate during all tides". This is similar to the guidance listed in DEP's 2003 document entitled, "Small Docks and Piers, A Guide to Permitting Small, Pile-Supported Docks and Piers," which recommends 1.5' above the substrate and 2.5' above substrate containing shellfish.
2. "No structure extends across >25% of the waterway width at mean low water". This should maintain 50% of the width as open water, an even split, between public and private interest.

The following was added at the request of the NMFS:

3. "No vegetated shallows located within 25' of any structure".

II. Navigable Waters, (f) Miscellaneous, Category 1

Delete these words, "Coast Guard-approved aids to navigation" and add the following, "The placement of aids to navigation and regulatory markers which are approved by and installed in accordance with the requirements of the U.S. Coast Guard. (See 33 CFR part 66, Chapter I, subchapter C)."

II. Navigable Waters, (f) Miscellaneous, Category 1

Added the italicized words, "Includes, but is not limited to, utility lines, aerial transmission lines, pipelines, outfalls, boat ramps, ~~and~~ bridges, *tunnels and horizontal directional drilling activities seaward of the MHW line*".

Footnote 1 formerly defined Inland Waters and Wetlands. Since this is defined in Appendix A, the footnote now defines just Bordering and Contiguous Wetlands.

Footnote 5 formerly defined Navigable Waters. Since this is defined in Appendix A, the footnote was removed.

Footnote 11 was added to clarify the definition of maintenance.