

**Clean Water Act, Section 401  
Water Quality Certificate  
Groton Wind, LLC  
March 2010**

Section 401 of the United States Clean Water Act (33 U.S.C. 1341) states, in part: *“Any applicant for a federal license or permit to conduct any activity including, but not limited to, the construction or operation of facilities, which may result in any discharge into the navigable waters, shall provide the licensing or permitting agency a certification from the State in which the discharge originates or will originate...that any such discharge will comply with the applicable provisions of sections 301, 302, 303, 306, and 307 of this title.....No license or permit shall be granted until the certification required by this section has been obtained or has been waived...”*

Because the proposed Groton Wind project will impact wetlands which appear to be subject to federal jurisdiction under Section 404 of the Clean Water Act, a permit from the US Army Corps of Engineers (“Corps”) will be required prior to construction. Thus, Section 401 applies to the project and a Water Quality Certificate (“WQC”) must be issued by the NH Department of Environmental Services (“NHDES”) under its authority pursuant to Section 401.

NHDES issued Water Quality Certificate # 2007-003 on May 30, 2007. This WQC was issued to cover projects which are approved by the NH Wetlands Bureau pursuant to NH RSA 482-A and subsequently authorized by the Corps under the Statewide Programmatic General Permit for New Hampshire (“PGP”).

The total wetland impact associated with this project is approximately 1.6 acres, which is substantially less than the 3.0 acre limit of the PGP. Coordination meetings with the Corps specific to the Groton Wind proposal indicates that the project would likely qualify for the PGP pending review by the NHDES and the Corps’ federal partners at the US Environmental Protection Agency, the US Fish and Wildlife Service, and the National Marine Fisheries Service. Thus, Groton Wind, LLC currently anticipates authorization of the project under this general permit process, which would eliminate the requirement for an individual Section 401 Water Quality Certificate application.

If it is later determined that an individual Section 404 Wetlands Permit application is required at a later date, or if the NHDES exercises its option to require either a modification to WQC #2007-003 or an individual WQC, then Groton Wind, LLC would compile the necessary Section 401 Water Quality Certificate application and submit the same to the NH Department of Environmental Services through the Site Evaluation Committee.

Included in this appendix are copies of WQC #2007-003 and the currently effective Corps PGP, issued on July 2, 2007.



The State of New Hampshire  
**DEPARTMENT OF ENVIRONMENTAL SERVICES**



**Thomas S. Burack, Commissioner**

Greg Penta  
Regulatory Division  
U.S. Army Corps of Engineers  
696 Virginia Road  
Concord, MA 01742-2751

**WATER QUALITY CERTIFICATION**

In Fulfillment of

**Section 401 of the United States Clean Water Act (33 U.S.C 1341)**

WQC # 2007-003

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<b>Activity Name</b>	New Hampshire State Programmatic General Permit
<b>Activity Location</b>	State of New Hampshire
<b>Owner/Applicant</b>	Regulatory Division U.S. Army Corps of Engineers 696 Virginia Road Concord, MA 01742-2751
<b>DATE OF APPROVAL</b> (subject to Conditions below)	May 30, 2007

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**A. INTRODUCTION**

The U.S. Army Corps of Engineers New England District (Applicant) seeks a Clean Water Act (CWA) Section 401 Water Quality Certification (Certification) from the New Hampshire Department of Environmental Services (DES) for the New Hampshire Programmatic General Permit (PGP). The PGP is a statewide permit, which will be issued by the Applicant pursuant to 33 CFR 325.5(c)(3), for minimal-impact activities within the State of New Hampshire. The intent of the PGP is to simplify the permit application review processes of the Applicant and DES Wetlands Bureau, as the permit review processes are nearly parallel relative to federal and state statutory authority. The new PGP will become effective June 2, 2007 and will subsequently expire on June 2, 2012. The current PGP expires June 2, 2007.

This 401 Certification documents laws, regulations, determinations and conditions related to the PGP for the attainment and maintenance of NH surface water quality standards, including the provisions of NH RSA 485-A:8 and NH Code of Administrative Rules Env-Ws 1700, for the support of designated uses identified in the standards.

## **B. WATER QUALITY CERTIFICATION APPROVAL**

Based on the findings and conditions noted below, the New Hampshire Department of Environmental Services (DES) has determined that any discharge associated with the Activity will not violate surface water quality standards, or cause additional degradation in surface waters not presently meeting water quality standards. DES hereby issues this 401 Certification subject to the conditions defined in Section E of this 401 Certification, in accordance with Section 401 of the United States Clean Water Act (33 U.S.C. 1341).

## **C. STATEMENT OF FACTS AND LAW**

- C-1. Section 401 of the United States Clean Water Act (CWA, 33 U.S.C. 1341) states, in part: "Any applicant for a federal license or permit to conduct any activity including, but not limited to, the construction or operation of facilities, which may result in any discharge into the navigable waters, shall provide the licensing or permitting agency a certification from the State in which the discharge originates or will originate...that any such discharge will comply with the applicable provisions of sections 301, 302, 303, 306, and 307 of this title.....No license or permit shall be granted until the certification required by this section has been obtained or has been waived...No license or permit shall be granted if certification has been denied by the State..."
- C-2. Section 401 further states, in part "Any certification provided under this section shall set forth any effluent limitations and other limitations, and monitoring requirements necessary to assure that any applicant for a Federal license or permit will comply with any applicable effluent limitations and other limitations...and shall become a condition on any Federal license or permit subject to the provisions of this section."
- C-3. RSA 485-A:8 and Env-Ws 1700 (Surface Water Quality Regulations, effective December 3, 1999) together fulfill the requirements of Section 303 of the Clean Water Act that the State of New Hampshire adopt water quality standards consistent with the provisions of CWA. Further, RSA 485-A:8 establishes two classes or grades of surface waters in New Hampshire for the purposes of classification: Class A and Class B.
- C-4. Env-Ws 1700 provides narrative water quality standards and numeric water quality criteria. Among other purposes, Env-Ws 1700 is used by DES for evaluating applications for 401 Water Quality Certification.
- C-5. Env-Ws 1701.02, entitled "Applicability", states that:
- a. These rules shall apply to all surface waters.
  - b. These rules shall apply to any person who causes point or nonpoint source discharge(s) of pollutants to surface waters, or who undertakes hydrologic modifications, such as dam construction or water withdrawals, or who

undertakes any other activity that affects the beneficial uses or the level of water quality of surface waters."

C-6. Env-Ws 1702.18 defines a discharge as:

a. The addition, introduction, leaking, spilling, or emitting of a pollutant to surface waters, either directly or indirectly through the groundwater, whether done intentionally, unintentionally, negligently, or otherwise; or

b. The placing of a pollutant in a location where the pollutant is likely to enter surface waters."

C-7. Env-Ws 1702.39 defines a pollutant as: "pollutant" as defined in 40 CFR 122.2. This means "dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, (except those regulated under the Atomic Energy Act of 1954, as amended (42 U.S.C. 2011 et seq.)), heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal, and agricultural waste discharged into water."

C-8. Env-Ws 1702.46 defines surface waters as "perennial and seasonal streams, lakes, ponds and tidal waters within the jurisdiction of the state, including all streams, lakes, or ponds bordering on the state, marshes, water courses and other bodies of water, natural or artificial," and waters of the United States as defined in 40 CFR 122.2."

C-9. Surface waters are navigable waters for the purposes of certification under Section 401 of the Clean Water Act. Surface waters are jurisdictional wetlands for the purposes of wetlands permitting under RSA 482-A.

C-10. The named and unnamed surface waters, including rivers and streams, lakes and ponds, and wetlands, in New Hampshire, potentially affected by activities permitted under the PGP, are surface waters under Env-Ws 1702.46.

C-11. Env-Ws 1703.01 (c) states that "All surface waters shall provide, wherever attainable, for the protection and propagation of fish, shellfish and wildlife, and for recreation in and on the surface waters."

C-12. Env-Ws 1703.19, entitled "Biological and Aquatic Community Integrity", states that

a. The surface waters shall support and maintain a balanced, integrated and adaptive community of organisms having a species composition, diversity, and functional organization comparable to that of similar natural habitats of a region; and

b. Differences from naturally occurring conditions shall be limited to non-detrimental differences in community structure and function."

- C-13. Env-Ws 1703.21 (a)(1) states that "Unless naturally occurring or allowed under part Env-Ws 1707, all surface waters shall be free from toxic substances or chemical constituents in concentrations or combinations that injure or are inimical to plants, animals, humans or aquatic life."
- C-14. The PGP is a federal wetlands permit under the federal Clean Water Act Section 404.
- C-15. The Applicant provided public notice for the PGP on March 12, 2007 and subsequently on April 3, 2007. The public notice included a draft PGP and a request for public comments. DES Watershed Management Bureau provided written comments by letter dated April 23, 2007.
- C-16. The Applicant is responsible for the development and implementation of the PGP, including any amendments.

#### **D. FINDINGS**

- D-1. The PGP reviewed for this 401 Certification is the draft PGP developed by the Applicant, as described in the public notice dated April 3, 2007 and in subsequent correspondence with the Applicant
- D-2. The PGP is a federal permit, which requires water quality certification under Section 401 of the federal Clean Water Act.
- D-3. Activities permitted under the PGP may result in a discharge and may cause permanent or temporary impacts to surface waters in New Hampshire.
- D-4. The Applicant consulted private and public entities, including the DES Wetlands Bureau during the development of the PGP.
- D-5. The PGP will be issued for projects that include dredge and fill of wetlands. DES Wetlands Bureau permitting process addresses dredge and fill impacts to jurisdictional wetlands. The 401 Certification decision relies, in part, on an approved permit from the DES Wetlands Bureau for the potential construction and post construction-related impacts to jurisdictional wetlands and other affected surface waters.
- D-6. Projects that include dredge and fill of wetlands under the PGP may also include temporary or permanent impacts to surface hydrologic conditions, such as peak runoff. DES Alteration of Terrain permitting process addresses impacts to surface hydrological conditions. The 401 Certification decision relies, in part, on an approved permit from the DES Alteration of Terrain Program for the potential construction and operation-related impacts to surface hydrology.
- D-7. DES periodically reviews wetlands permit applications for projects included under the PGP to determine whether additional conditions or an individual 401 Certification application is necessary.

- D-8. Most projects included under the PGP, if conducted in accordance with the conditions of the PGP, DES Wetlands Permit, and DES Alteration of Terrain Permit are not expected to cause or contribute to violations of water quality standards.

#### **E. WATER QUALITY CERTIFICATION CONDITIONS**

- E-1. Construction or operation of all projects included under the PGP shall meet NH surface water quality standards.
- E-2. Applications for projects included under the PGP shall be subject to DES review to determine whether additional conditions or an individual 401 Certification application is necessary to ensure compliance with surface water quality standards.
- E-3. If DES determines that surface water quality standards are being violated by the specific project or there is reasonable potential to expect that water quality standards will be violated if more project specific conditions are not included in the 401 Certification, DES may modify this 401 Certification for the specific project to include additional conditions to ensure compliance with surface water quality standards, when authorized by law, and after notice and opportunity for hearing.
- E-4. Construction on any specific project permitted under the PGP shall not commence until all other applicable permits and approvals have been granted, including those permits issued through DES Wetlands Bureau and, if necessary, DES Alteration of Terrain Program.
- E-5. All applicable conditions in the NH PGP shall be followed.
- E-6. DES reserves the right to inspect any project permitted under the PGP and the effects of the project on affected surface waters at any time to monitor compliance with the NH surface water quality standards.

#### **F. APPEAL**

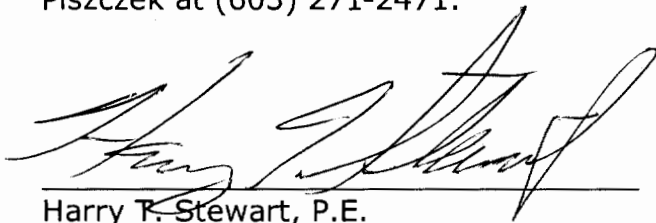
If you are aggrieved by this decision, you may appeal the decision to the Water Council. Any appeal must be filed within 30 days of the date of this decision, and must conform to the requirements of Env-WC 200. Inquiries regarding appeal procedures should be directed to Michael Sclafani, DES Council Appeals Clerk, 29 Hazen Drive, PO Box 95, Concord, NH 03302-0095; telephone 603-271-6072.

401 Certification 2007-003

May 30, 2007

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If you have questions regarding this 401 Certification, please contact Paul Piszczek at (603) 271-2471.

A handwritten signature in black ink, appearing to read "Harry T. Stewart", written over a horizontal line.

Harry T. Stewart, P.E.  
Director, Water Division

cc: Frank Delguidice, U.S. Army Corps of Engineers  
Collis Adams, DES Wetlands Bureau  
Paul Piszczek, DES Watershed Management Bureau  
Chris Williams, DES Watershed Management Bureau (Coastal Consistency Program)  
Dan Lynch, NH Fish and Game Department  
Ralph Abele, U.S. Environmental Protection Agency  
Michael Bartlett, U.S. Fish and Wildlife Service



**US Army Corps  
of Engineers**<sup>®</sup>  
New England District

696 Virginia Road  
Concord, MA 01742-2751

# PUBLIC NOTICE

**Date:** July 2, 2007

**In Reply Refer To:** Greg Penta

**E-mail:** gregory.r.penta@usace.army.mil

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## **ISSUANCE OF THE DEPARTMENT OF THE ARMY NEW HAMPSHIRE PROGRAMMATIC GENERAL PERMIT**

The New England District, U.S. Army Corps of Engineers, 696 Virginia Road, Concord, Massachusetts 01742-2751 hereby announces the reissuance of the statewide New Hampshire Programmatic General Permit (PGP), pursuant to 33 CFR Part 325.5(c)(3), for minimal-impact activities within the State of New Hampshire. The previous PGP expired on June 2, 2007. The New Hampshire 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 ensure potential applicants for permits are informed of the requirements of 33 CFR 320-330 and of the steps required to obtain permits for activities in waters of the U.S. or ocean waters.


General permits are encouraged under the President's plan to streamline state and Federal regulatory programs. The New England District has already had success with streamlining these programs through the use of general permits throughout New England. This PGP is designed to authorize activities formerly covered under the Nationwide Permit (NWP) program and the prior PGP that expired on June 2, 2007. This newly issued PGP became effective on June 28, 2007. Continued utilization of the general permit process in place of the NWPs 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 not meeting the PGP's terms and general conditions, of which General Condition 3 requires projects authorized by the PGP to have minimal effects and secondary (indirect) and cumulative adverse environmental impacts, are subjected to an Individual Permit review. Federal exemptions, which are not necessarily the same as the State of New Hampshire's exemptions, are also not altered by the PGP. In addition, for projects authorized pursuant to this PGP, project proponents must obtain the appropriate or State approvals when required in order for this PGP authorization to be valid.

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 (June 2, 2007), in reliance upon the terms and conditions of the category under which it was authorized, shall remain authorized in accordance with the project-specific date provided in writing by the Corps to the permittee.



You can view the New Hampshire PGP on our web site at [www.nae.usace.army.mil](http://www.nae.usace.army.mil). Select “Regulatory/Permitting,” “Programmatic General Permits” and then “New Hampshire.” Changes to the PGP are listed in the PGP’s environmental assessment. Please contact Mr. Penta at (978) 318-8862 or [gregory.r.penta@usace.army.mil](mailto:gregory.r.penta@usace.army.mil) for more information, or a copy of the PGP or supporting documentation.

  
for Christine Godfrey  
Chief, Regulatory Division

Enclosure

## **Department of the Army Programmatic General Permit State of New Hampshire**

The New England District of the U.S. Army Corps of Engineers (Corps) hereby issues this Programmatic General Permit (PGP) that expedites review of minimal impact work in coastal and inland waters and wetlands within the State of New Hampshire. This New Hampshire PGP minimizes duplication between New Hampshire's Regulatory Program governing work within coastal and inland waters and wetlands and the Corps Regulatory program. Subject to certain exclusions and conditions, the PGP eliminates the need to apply for separate approval from the Corps for most minor, non-controversial work in New Hampshire when that work is authorized by the New Hampshire Department of Environmental Services (DES) Wetlands Bureau.

The Corps will review projects according to the State of New Hampshire classification of Minimum, Minor and Major impact projects per the State of New Hampshire Wetland Rules Env-Wt 100 - 800. The Corps review thresholds (see Appendix A) are typically the same as the State's thresholds, but may differ. For example, the wetland fill thresholds for a Minimum are <3,000 square feet (SF) (State and Corps), Minor [ $\geq 3,000$  to <20,000 SF (State and Corps)] and Major [ $\geq 20,000$  SF (State);  $\geq 20,000$  SF to <3 acres (Corps)].

### **I. GENERAL CRITERIA:**

Activities with minimal impacts, as specified by this PGP's terms (Pages 1 – 7), general conditions (Pages 8 – 17), and Appendix A - Definition of Categories, qualify for authorization under this PGP as either a Minimum Impact Project, or Minor or Major Impact Project.

Proponents should **first** review Appendix A - Definition of Categories to see if a project is eligible under this PGP:

- **Minimum Impact Project:**  
[Minimum Impact Projects may proceed after receiving DES Wetlands Bureau authorization unless the applicant receives written notification from the Corps (see Page 3). An application to the State and the secondary impact information required in Appendix B (this is also attached to the State's application) is required for all projects, unless exempt from State regulation.];
- **Minor or Major Impact Project:**  
[Minor Impact Projects may proceed after 30 days from the date of the NH Wetland Bureau authorization unless the applicant receives written notification from the Corps (see Page 4). Major Impact Projects require written authorization from the Corps. An application to and written authorization from the State is required.]

If you determine that your project is eligible as a Minimum Impact Project after reviewing Appendix A, you must then ensure that your project is in full compliance with this PGP's terms and general conditions. If any of these terms or general conditions are not met, your project must be reviewed under the Minor or Major Impact Project procedures or Individual Permit procedures. The Individual Permit thresholds are defined in Appendix A and the procedures are briefly described on Page 7. This PGP does not affect the Corps Individual Permit review process or activities exempt from Corps regulation.

## II. ACTIVITIES COVERED:

- Work and structures that are located in, or that affect, navigable waters of the United States (U.S.) [33 CFR 328.4(c)] (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 U.S. (regulated by the Corps under Section 404 of the Clean Water Act)<sup>1</sup>; [33 CFR 323.4, Discharges not requiring permits, states any discharge of dredged or fill material that may result from normal farming, silviculture and ranching activities is not prohibited by or otherwise subject to regulation under Section 404 (except as specified in paragraphs (b) and (c) of that section).] 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). The term “discharge of dredged or fill material” also includes certain discharges resulting from excavation. Applicants should contact the Corps to determine if a particular excavation discharge occurring within waters or wetlands is a regulated activity.

## III. PROCEDURES:

### 1. State Approvals

a. In order for PGP authorizations to be valid, when any of the following state approvals are also required, the approvals must be obtained prior to the commencement of work in Corps jurisdiction (see General Condition 1). Applicants are responsible for applying for and obtaining any of the required State approvals.

(i) Water Quality Certification (WQC) under Section 401 of the Federal Clean Water Act (CWA) (33 USC 1341). The CWA requires applicants to obtain a WQC or waiver from the state water pollution control agency (DES, Watershed Management Bureau) for any activity that may discharge pollutants during construction or operation of the activity. The DES has granted WQC #2007-003 for PGP activities, provided that the applicant obtains the required state wetlands and Alteration of Terrain approvals and complies with PGP conditions. Under condition E-2 of the WQC, PGP activities shall be subject to DES review to determine whether additional conditions or an Individual 401 Certification application is necessary to ensure compliance with surface water quality standards.

(ii) Coastal Zone Management Act (CZMA) Federal Consistency Concurrence pursuant to Section 307 of the CZMA of 1972, as amended. The NH DES administers the NH Coastal Program (NHCP). The NHCP has determined that any project in the NH Coastal Zone that is authorized under the Minimum, Minor or Major Impact Project categories of this PGP is consistent with the NHCP and does not require additional CZMA Federal consistency review. The landward boundary of the state’s coastal zone encompasses the jurisdictional borders of the 17 coastal municipalities subject to tidal influence. The seaward boundary of the state’s coastal zone extends three nautical miles offshore.

(iii) Dredge, fill or construction in and adjacent to wetlands or waters of the state requires a permit from NH DES pursuant to RSA 482-A. Alteration of sand dunes or its vegetation, the upland tidal buffer zone, or in areas adjacent to designated prime wetlands also requires a DES wetlands permit.

(iv) Pursuant to RSA 482-A:17 and Env-Ws 415.03 an Alteration of Terrain is required from DES Alteration of Terrain program prior to commencing: projects involving dredging, excavation, filling, mining, transporting of forest products, construction, earth moving, or other significant alteration of the characteristics of the terrain as defined in Env-Ws 415.02 that will occur in or on the border of the surface waters of the state; or construction, earth moving, or other significant alteration of the characteristics of the terrain as defined Env-Ws 415.02 when a contiguous area of 50,000 square feet or more if within the protected shoreland as defined by RSA 483-B or 100,000 square feet or more in all other areas will be disturbed.

(v) Comprehensive Shoreland Protection Act: Excavation, filling and construction within the Protected Shoreland zone will require approval from DES in accordance with the Comprehensive Shoreland Protection Act pursuant to RSA 483-B. Minimum standards for the maintenance of a natural woodland buffer and lots sizing as well as impervious surface limits are also set by this statute.

(vi) Rivers Management and Protection Act: The DES and other state agencies are required to coordinate with the DES Rivers Coordinator prior to issuing permits affecting any river or segment designated rivers.

b. The following authorizations from the State of New Hampshire may also be required:

(i) The NH Endangered Species Conservation Act (“Endangered Species Act (ESA)”) may also be applicable to DES review under the Wetlands, Shoreland and Water Pollution Acts. The Endangered Species Act provides that “[s]pecies of wildlife normally occurring within this state which may be found to be in jeopardy should be accorded such protection as is necessary to maintain and enhance their numbers.” RSA 212-A:3, I. The Endangered Species Act requires state agencies to cooperate with the New Hampshire Fish & Game Department in protecting endangered species, and voids state laws inconsistent with its provisions. *Id.*; RSA 212-A:8, RSA 212-A:9, III. Thus, DES review and permitting decisions under the Wetlands, Shoreland and Water Pollution Acts must ensure the protection of any endangered or threatened species at or near the project site.

## **2. Corps Authorizations**

The 3 PGP review categories (Minimum, Minor and Major) are listed below. The Corps reserves the right to require a PGP or Individual Permit review for Minimum Impact Projects, or an Individual Permit review for Minor or Major Impact Projects, if the Corps determines the project will have more than minimal environmental impacts, or based on a concern for any other factor of the public interest.

## **MINIMUM IMPACT PROJECTS**

### **Eligibility**

Activities in NH that:

- Are subject to Corps jurisdiction [see General Condition (GC) 2, Page 8];
- Meet the general conditions of this PGP (Pages 8 - 17);
- Are listed under the heading Minimum Impact Project in Appendix A;
- Meet the definitions of a State of New Hampshire Minimum Impact Project;
- Receive approval from the DES Wetlands Bureau and all other applicable State agencies; and
- Receive all other required Federal and State approvals listed on Page 2;

may proceed upon authorization from the DES Wetlands Bureau unless notification is received from the Corps requiring further review or additional information.

### **Abbreviated Application Procedures (Minimum Impact Project)**

Applicants must submit the information at Appendix B, which includes the Corps Secondary Impacts Checklist. For convenience, Appendix B is also attached to the DES Wetlands Bureau application and Permit by Notification forms. The Corps will review this information for all projects to assess direct, indirect (secondary impacts) and cumulative impacts. The Corps will decide that the project:

- as proposed will have no more than minimal environmental impacts, which means the project may then proceed upon authorization from the DES Wetlands Bureau without waiting for Corps confirmation, or
- will receive a higher review level if there are concerns for the aquatic environment, any other factor of the public interest, or for any potential secondary impacts. If a higher level review is required, the Corps will attach a notification to the DES Wetlands Bureau decision. The Corps will later contact the applicant to notify them of their project status and request any additional information that may be required.

Project proponents seeking Minimum Impact Project authorizations are not relieved of the obligation to comply with this PGP's general conditions (Pages 8 - 17) and other Federal laws such as the National Historic Preservation Act, the Endangered Species Act and the Wild and Scenic Rivers Act. Therefore, consultation with the Corps and/or agencies such as the NH Historic Preservation Officer is required when there is a high likelihood of the presence of resources of concern. Secondary impacts must be included when determining if a project qualifies as a Minimum Impact Project (see GC 3). Fill area includes all temporary and permanent fill.

## **MINOR AND MAJOR IMPACT PROJECTS**

### **Eligibility**

Activities in NH that:

- Are subject to Corps jurisdiction (see General Condition 2, Page 8);
- Meet the general conditions of this PGP (Pages 8 through 17);
- Meet the definition of Minor or Major Impact Projects in Appendix A;
- Meet the definitions of a State of NH Minor or Major Impact Project;
- Meet the definition of Minimum Impact Project but have been determined by the Corps to have concerns for the aquatic environment, any other factor of the public interest, or for any potential secondary impacts (see Page 3);
- Receive approval from the DES Wetlands Bureau and all other applicable State agencies;
- Receive all other required Federal and State approvals (Page 2); and
- Have been reviewed by the Corps and the Federal resource agencies (Page 5);

for **Minor Impact Projects**, may proceed after 30 days from the DES Wetlands Bureau decision unless the applicant receives written notification from the Corps either requesting additional information or requiring modifications to the proposal, or requiring an Individual Permit for the project.

for **Major Impact Projects**, may proceed upon receipt of written authorization from the Corps. The Corps will notify the applicant within 30 days from their DES Wetlands Bureau decision if: their project is authorized under the PGP, additional information is needed or an Individual Permit review is required.

Env-Wt 303 Classification of Projects specifies the classifications for Major, Minor and Minimum Impact Projects. The DES Wetlands Bureau will classify a project once it has been found to be technically complete and will provide that classification to the proponent along with their DES Wetlands Bureau decision. For inland wetland fill projects, the DES Wetlands Bureau thresholds are 3,000 to <20,000 SF (Minor Impact Project) and  $\geq$ 20,000 SF (Major Impact Project).

### **C. Application Procedures (Minor and Major Impact Project)**

For projects qualifying as Minor or Major Impact Projects, the town clerk will send a copy of the State application package to the DES Wetlands Bureau. After the DES Wetlands Bureau assigns a State file number, the State will make a copy available to the Corps. The State agencies have their own application process and the DES will make applications available to the Corps.

All applicants shall submit a copy of their application materials to the NH State Historic Preservation Officer (SHPO) (see Page 19) to be reviewed for the presence of historic/archaeological resources in the permit area that may be affected by the proposed work. The SHPO will notify the Corps if there are State concerns that the proposed work will have an effect on historic resources. The applicant must submit with their application to the DES Wetlands Bureau, either a copy of their cover letter, or a statement of having sent their application materials to the SHPO.

#### **Information Required:**

See Appendix B (Required Information), which is also an addendum to the New Hampshire DES Wetland Bureau application.

### **D. Federal/State Review Procedures (Minor and Major Impact Project)**

The Corps, Federal resource agencies [U.S. Fish and Wildlife Service (US FWS), U.S. Environmental Protection Agency (EPA), and National Marine Fisheries Service (NMFS)] and the DES Wetlands Bureau will comprise the interagency review team. The Corps will review all applications for Minor and Major projects with the interagency review team at monthly interagency review meetings (“Joint Processing Meetings”) at the DES Wetlands Bureau. The Corps and the Federal resource agencies at the branch chief or equivalent level may agree on certain activities that do not require coordination at these meetings or may substitute a different review process.

The Corps may determine on its own or in consultation with the interagency review team, if applications for Minor and Major projects work:

1. Are eligible under the PGP as proposed;
2. Require additional information;
3. Will require project modification, mitigation or other special conditions to avoid or minimize adverse environmental impacts and protect the aquatic environment to be eligible for authorization under this PGP; or
4. Are ineligible under the terms and/or conditions of this PGP;
5. Require Individual Permit review irrespective of whether the terms and general conditions of this PGP are met, based on concerns for the aquatic environment or any other factor of the public interest (see General Condition 4).

If the Corps determines that a project is eligible for this PGP and there are no Federal agency concerns, no further contact with the Corps is necessary.

- **For Minor Impact Projects**, applicants may proceed after the 30 day waiting period.
- **For Major Impact Projects**, the applicant must wait for written authorization from the Corps. If an applicant for a Major Impact Project does not hear from the Corps within the 30 day waiting period, the applicant should call the Corps. To proceed with a Major Impact Project without written authorization is a violation of this permit and the applicant may be subjected to an enforcement action by the Corps.

The Corps, or the Federal resource agencies within ten business days of the review meeting, may 1) request additional information, 2) recommend modification, mitigation, or special conditions to avoid or minimize adverse environmental impacts associated with the aquatic environment and to ensure the terms and general conditions of the PGP are met, or 3) require Individual Permit review.

The Federal resource agencies may request additional information within their area of expertise within ten business days of the review meeting. This information shall be commensurate to the level of impact and agreed upon by the Corps. The agencies are allowed an additional ten business days after their receipt of additional information to provide special conditions or a written Individual Permit request to the Corps.

The Corps will contact the applicant either by phone or in writing if there are concerns. For additional information requests, the Corps will copy the DES Wetlands Bureau and the Federal resource agency making the request. If the applicant is unable to resolve the concerns or modify the project, the Corps may determine that a project is ineligible under this PGP, “kickout” the project to the Individual Permit review category, and begin its Individual Permit review procedures. The Corps will send a “Kickout Letter” to the applicant and copy the DES Wetlands Bureau and the commenting Federal resource agency on any written correspondence to the applicant. The Corps may reinstate a project’s eligibility under the PGP provided the Federal agencies’ concerns are satisfied.

The Corps will also “kickout” the project and begin its Individual Permit review procedures at the request of the Federal resource agencies if an agency within ten business days of either the review meeting date or receiving additional information 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 ten-day notice may be verbal and is not required to be fully documented, but the Corps will require confirmation with a written response within an additional ten business days from the verbal comment date if the agency decides not to reinstate the project’s eligibility under the PGP and proceeds with their Individual Permit request. Written responses must be signed by the Federal resource agency field supervisor or branch chief, as appropriate, and must identify the affected resource within their area of expertise. The intent of the verbal notification is to allow the Corps to give timely notification to the applicant that additional information is needed and/or an Individual Permit may be required.

In accordance with regional environmental concerns, most proposals for work which involve impacts >1 acre will require an Individual Permit application and review, an alternatives analysis and mitigation. Projects impacting >3 acres of wetlands will require an Individual Permit. Generally, the following types of impacts are viewed as minimal and are eligible for PGP authorization (subject to agency review and Corps approval) for projects impacting from 1 and 3 acres of wetlands:

- Widening of transportation projects and expansions of existing projects.
- Wetland edge encroachments and/or wetland crossings to access usable uplands
- Low or degraded wetlands

#### **E. Emergency Procedures: Minor and Major Impact Projects**

Any project proponent may request emergency authorization from the Corps. However, the Corps will determine if a project qualifies for these emergency situation procedures. Contact the Corps and the State in the event of an emergency situation (contact info on page 18.) The State's emergency procedures are listed at Env-Wt 503 Emergency Procedures.

Emergency work shall be authorized by the Corps when a threat to public safety or public health exists or significant damage to private property is imminent and the event causing the emergency occurred within 5 days of the request for emergency approval. Emergency authorization shall be limited to stabilization of the site or mitigation of the immediate threat.

The work proponent shall submit a description of all work performed during an emergency, except for those projects classified minimum impact, in lieu of a permit application. Applications as required under Env-Wt 501 shall be submitted for any permanent repairs, restoration, or other activities proposed to be conducted after the emergency has ended.

#### **F. Construction of Solid Fill Structures and Fills Along the Coastline or Baseline From Which the Territorial Sea is Measured (Minor and Major Impact Projects)**

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 USC 1301-1315, 33 CFR 320.4(f)). The Corps will forward project information to MMS for their review. The 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 received the project information to determine if the baseline will be affected. If the Corps is not notified within the 15 day period it will assume a "no effect" determination. If the solicitor's notification to the Corps is verbal, it must be followed with a written confirmation within 10 business days of the date of the verbal notification. This procedure will be eliminated if the State of New Hampshire 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 PGP.

### **IV. INDIVIDUAL PERMIT**

Work that is in the Individual Permit category listed in Appendix A, or work that does not meet the terms and general conditions of this PGP, will require an application for an Individual Permit from the Corps (33 CFR 325.1). Applicants should submit the appropriate application materials directly to the Corps as early as possible to expedite the permit review process. General information and application forms can be obtained at our web site or by calling us (see Page 18). Individual 401 WQC and/or CZM Federal consistency concurrence from the appropriate NH agencies are required before the Corps issues an Individual Permit. Filing an Individual Permit application does not relieve the applicant from their obligation to obtain all required Federal and State approvals.



## V. GENERAL PERMIT CONDITIONS:

The following general conditions apply to all activities authorized under this PGP, including all Minimum, Minor and Major Impact Projects.

### 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 or to comply with all Federal, State of New Hampshire, or local laws.
- 2. Federal Jurisdictional Boundaries.** Applicability of this GP shall be evaluated with reference to Federal jurisdictional boundaries. Applicants are responsible for ensuring that the boundaries used satisfy the Federal criteria defined at 33 CFR 328-329. These sections prescribe the policy, practice and procedures to be used in determining the extent of jurisdiction of the Corps concerning “waters of the U.S.” and “navigable waters of the U.S.” Wetland boundaries shall be performed in accordance with the January 1987 Corps of Engineers Wetlands Delineation Manual, located at [www.saj.usace.army.mil/permit/documents/87manual.pdf](http://www.saj.usace.army.mil/permit/documents/87manual.pdf) and applicable regional supplements. The USFWS published the 1988 National List of Plant Species that Occur in Wetlands, located at [www.nwi.fws.gov](http://www.nwi.fws.gov). The Corps will publish future updates of this plant list and make it available on their website. The Natural Resources Conservation Service (NRCS) publishes the current hydric soil definition, criteria and lists, located at <http://soils.usda.gov/use/hydric/>. We encourage the use of a regional guide entitled, “Field Indicators for Identifying Hydric Soils in N.E.” See [www.neiwpcc.org/hydricsoils.asp](http://www.neiwpcc.org/hydricsoils.asp).
- 3. Minimal Effects and Secondary (Indirect) and Cumulative Impacts.** Projects authorized by this PGP shall have no more than minimal individual, secondary and cumulative adverse environmental impacts to waters of the U.S. as a result of construction and operation of the project. The PGP does not impose any obligation on DES to assess secondary impacts that does not already exist in state law. See Appendix A, Endnote 3 for a secondary impacts definition. In order for the Corps to determine whether independent Corps review of a project with possible secondary and cumulative impacts is required, applicants must complete the Corps Secondary Impacts Checklist at Appendix B. For convenience, Appendix B is also provided as an attachment to the DES Wetlands Bureau application and Permit by Notification forms.
  - For waterway and/or wetland areas, secondary impacts (e.g., areas drained, flooded, cleared, excavated or fragmented) shall be added to the total fill area when determining the project review category (Minimum, Minor/Major or Individual Permit review) for the Corps.
  - For the project area, the Corps, State and Federal resource agencies will review projects to determine if there are discernable secondary impacts on waters and wetlands necessitating a higher review level. The Corps Secondary Impacts Checklist will assist with this review.
- 4. Discretionary Authority.** Notwithstanding compliance with the terms and general conditions of this PGP, the Corps retains discretionary authority to require either a Minor/Major Project review or an Individual Permit review for any project, including a higher level review for a Minimum Impact Project, based on concerns for the aquatic environment or for any other factor of the public interest (33 CFR 320.4(a)). This authority is invoked on a case-by-case basis whenever the Corps determines that the potential impacts of the proposal warrant either a Minor/Major Project review or an 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 and that warrants greater review. Whenever the Corps notifies an applicant that either a Minor/Major Impact

Project review or Individual Permit review is required, authorization under this PGP is void, and no work may be conducted until the Corps issues the required authorization or until the Corps notifies the applicant that further review has demonstrated that the work may proceed under this PGP.

**5. Single and Complete Projects.** This PGP shall not be used for piecemeal work and shall be applied to single and complete projects. All components of a single project and/or all planned phases of a multi-phased project shall be treated together as constituting one single and complete project, unless the Corps determines that a component has independent utility. For linear projects, such as power lines or pipelines with multiple crossings, the “single and complete project” (i.e., single and complete crossing) will apply to each crossing of a separate water of the U.S. (i.e., single waterbody) at that location; except that for linear projects crossing a single waterbody several times at separate and distant locations, each crossing is considered a single and complete project, and may qualify for Minimum Impact Project eligibility. (However, individual channels in a braided stream or river, or individual arms of a large, irregularly-shaped wetland or lake, etc., are not separate waterbodies.) If any crossing requires a Minor/Major Impact Project review, then the entire linear project shall be reviewed as one project under the Minor/Major Impact Project review procedures provided that the impact thresholds in Appendix A are met. Also, this PGP shall not be used for any activity that is part of an overall project for which an Individual Permit is required, unless the Corps determines the activity has independent utility. Note that modifications to State permits may not constitute a separate project. Modifications which involve Corps jurisdiction will be reviewed at the regular review meetings in order to ascertain compliance with the PGP. Keep in mind that a linear project normally qualifying as a Minimum Impact Project will trigger a higher-level Corps review if the impacts exceed this PGP’s general conditions.

**6. Permit On-Site.** For Minor/Major projects, the permittee shall ensure that a copy of this PGP and the accompanying authorization letter are at the work site (and the project office) authorized by this PGP whenever work is being performed, and that all personnel with operation control of the site ensure that all appropriate personnel performing work are fully aware of its terms and conditions. The entire permit authorization shall be made a part of any and all contracts and sub-contracts for work that affects areas of Corps jurisdiction at the site of the work authorized by this PGP. This shall be achieved by including the entire permit authorization in the specifications for work. The term “entire permit authorization” means this PGP and the authorization letter (including its drawings, plans, appendices and other attachments) and also includes permit modifications. If the authorization letter is issued after the construction specifications, but before receipt of bids or quotes, the entire permit authorization shall be included as an addendum to the specifications. If the authorization letter is issued after receipt of bids or quotes, the entire permit authorization shall be included in the contract or sub-contract as a change order. Although the permittee may assign various aspects of the work to different contractors or sub-contractors, all contractors and sub-contractors shall be obligated by contract to comply with all environmental protection provisions contained within the entire PGP authorization, and no contract or sub-contract shall require or allow unauthorized work in areas of Corps jurisdiction.

#### **General Conditions Related to National Concerns:**

**7. Historic Properties.** Any activity authorized by this PGP 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 New Hampshire Historic Preservation Office (See page 18) and the National Register of Historic Places. Project proponents shall apply to the Corps for all projects that would otherwise qualify for a Minimum Impact Project if there is the potential for an effect on a historic property within the permit area or any known historic property that may occur outside the permit area. Historic properties include those that are eligible for inclusion, but not necessarily listed on the National

Register. If the permittee, during construction of work authorized herein, encounters a previously unidentified archaeological or other cultural resource within the area subject to Corps jurisdiction that might be eligible for listing in the National Register of Historic Places, he/she shall stop work and immediately notify the Corps and the New Hampshire Historic Preservation Office.

**8. National and Corps Lands.** Activities authorized by this PGP shall not impinge upon the value of any National Wildlife Refuge, National Forest, National Estuarine Research Preserves, National Marine Sanctuary, National Park or any other area administered by the U.S. FWS, U.S. Forest Service, National Oceanic and Atmospheric Administration, or National Park Service. No Minimum Impact Project work is allowed on Corps properties & Corps-controlled easements (see Appendix A, Endnote 8).

**9. Endangered Species.** No activity may be authorized under this PGP which:

- May affect a threatened or endangered species, a proposed species, designated critical habitat, or proposed critical habitat identified under the Federal Endangered Species Act (ESA);
- 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 their critical habitat, or proposed species or their critical habitat, is in the vicinity of the project and shall not begin work until notified by the Corps 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. FWS and NMFS (see page 19). If consultation with the FWS or NMFS results in project modifications or permit conditions which resolve the issue, the Corps may issue a PGP. State-listed species are also considered under this PGP.

**10. Essential Fish Habitat (EFH).** EFH is designated in most of New Hampshire’s coastal waters, estuaries, and rivers. In addition, rivers and streams designated as EFH for Atlantic salmon are listed in Appendix C. As stated in Appendix A, work in EFH waters are not allowed as a Minimum Impact Project. As part of the PGP review process, the Corps will coordinate with NMFS in accordance with the 1996 amendments to the Magnuson-Stevens Fishery Conservation and Management Act to protect and conserve the habitat of marine, estuarine and anadromous finfish, mollusks, and crustaceans. “EFH” and is broadly defined to include “those waters and substrate necessary to fish for spawning, breeding, feeding, or growth to maturity.” For additional information on designations, descriptions, and/or locations, see [www.nero.noaa.gov/hcd](http://www.nero.noaa.gov/hcd) or contact NMFS (see Page 18).

**11. Wild and Scenic Rivers.** Any activity that occurs in a component of, or within 0.25 miles up or downstream of the main stem or tributaries of a river 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 review procedures of this PGP regardless of the 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 an official study status. If preapplication consultation between the applicant and the administering agency [National Park Service (NPS) or USDA Forest Service] 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 New Hampshire as of February 2007, include: Wildcat Brook from its headwaters to the confluence with the Ellis River (administered through the White Mountain National Forest), and the Lamprey River from the West Epping Dam to the confluence with the Piscassic River (administered by the NPS, Northeast Region).

**12. Federal Navigation Project.** Any structure or work that extends closer to the horizontal limits of any Corps Federal Navigation Project (FNP) than a distance of three times the FNP's authorized depth shall be subject to removal at the owner's expense prior to any future Corps dredging or the performance of periodic hydrographic surveys. See Appendix D for a list of FNPs.

**13. Navigation.** (a) 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. (b) The permittee understands and agrees that if future operations by the U.S. require the removal, relocation or other alteration of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps, to remove, relocate or alter the structural work or obstructions caused thereby, without expense to the U.S. No claim shall be made against the U.S. on account of any such removal or alteration.

**14. Federal Liability.** In issuing this PGP, 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 U.S. in the public interest; (c) damages to persons, property or to other permitted or unpermitted activities or structures caused by the activity authorized by the PGP; (d) design or construction deficiencies associated with the permitted work; (e) damage claims associated with any future modification, suspension or revocation of this permit.

#### **General Conditions Related to Minimizing Environmental Impacts:**

**15. Avoidance, Minimization and Mitigation.** Discharges of dredged or fill material into waters of the U.S. and any secondary impacts shall be avoided and minimized to the maximum extent practicable. Permittees may only fill those jurisdictional wetlands and waterways that the Corps authorizes to be filled and impact those areas that the Corps authorizes as secondary impacts. If not specifically authorized, any unauthorized fill or secondary impact to wetlands may be considered as a violation of the CWA. Mitigation will likely be required for fills >10,000 SF, stream work >200 FT, and other circumstances (see Env-Wt 302 and 800).

- Unless specifically authorized, no work shall drain a water of the U.S. by providing a conduit for water on or below the surface.

**16. Heavy Equipment in Wetlands.** Heavy equipment other than fixed equipment (drill rigs, fixed cranes, etc.) working in wetlands shall not be stored, maintained or repaired in wetlands, unless it is less environmentally damaging otherwise, and as much as possible shall not be operated there. Where construction requires heavy equipment operation in wetlands, the equipment shall either have low ground pressure (<3 psi), or shall not be located directly on wetland soils and vegetation; it shall be placed on swamp mats<sup>1</sup> that are adequate to support the equipment in such a way as to minimize

<sup>1</sup> "Swamp mats" is a generic term used to describe structures that distribute equipment weight to prevent wetland damage while facilitating passage and providing work platforms for workers and equipment. They are comprised of sheets or mats made from a variety of materials in various sizes. A type of swamp mat is a timber mat, which consists of large timbers bolted or cabled together. Corduroy roads, which are not considered to be swamp mats, are cut trees and/or saplings with the crowns and branches removed, and the trunks lined up next to one another. Corduroy roads are typically installed as permanent structures. Like swamp mats, they are considered as fill whether they're installed temporarily or permanently.

disturbance of wetland soil and vegetation. Swamp mats are to be placed in the wetland from the upland or from equipment positioned on swamp mats if working within a wetland. Dragging swamp mats into position is prohibited. Other support structures that are less impacting and are capable of safely supporting equipment may be used with written Corps authorization. Similarly, not using mats during frozen, dry or other conditions may be allowed with written Corps authorization. (See GC 17 below.) An adequate supply of spill containment equipment shall be maintained on site. Corduroy roads and swamp/construction mats are considered as fill whether they're installed temporarily or permanently.

**17. Temporary Fill.** If a project's combined temporary and permanent fill totals <3,000 SF, the project may be authorized as a Minimum Impact Project if it meets this definition in Appendix A and it is in compliance with this PGP's terms and general conditions. If a project's combined temporary and permanent fill is  $\geq 3,000$  SF, no temporary fill (e.g., access roads, cofferdams) shall be placed in waters of the U.S. (including wetlands) unless the Corps conducts a Minor/Major Impact Project review and 30 days have elapsed after receiving your DES Wetlands Bureau authorization without hearing from the Corps. See GC 3 for calculating secondary impacts.

- Swamp/construction mats and corduroy roads (see GC 16 above) are considered as temporary fill when they are removed immediately upon work completion.
- All temporary fill shall be stabilized to prevent its eroding into portions of waters of the U.S. where it is not authorized.
- Unconfined temporary fill authorized for discharge into waters of the U.S. shall consist of material that minimizes impacts to water quality (e.g. sandbags or clean, gravel and/or stone).
- Temporary fill authorized for discharge into wetlands shall be placed on geotextile fabric laid on the pre-construction wetland grade. (Swamp and timber mats are excluded from this requirement.)
- 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 waters of the U.S.
- Waters of the U.S. where temporary fill was discharged shall be restored (see GC 18).
- If temporary fill is staged and then returned to its original location, e.g., sewer projects through wetlands, the original location shall be restored.
- Temporary fills shall be disposed of at an upland site and suitably contained to prevent erosion and/or transport to a waterway or wetland.
- Swamp mats shall be properly installed (i.e., not dragged into position) and removed immediately upon the completion of work.

### **18. Work Site Restoration.**

- Upon completion of construction, all disturbed wetland areas shall be properly stabilized. Any seed mix shall contain only plant species native to New England.
- The introduction or spread of invasive plant species in disturbed areas is prohibited (see GC 25).
- In areas of authorized temporary disturbance, if trees are cut they shall be cut at ground level and not uprooted in order to prevent disruption to the wetland soil structure and to allow stump sprouts to revegetate the work area, unless otherwise authorized.
- Wetland areas where permanent disturbance is not authorized shall be restored to their original condition and elevation, which under no circumstances shall be higher than the pre-construction elevation. Original condition means careful protection and/or removal of existing soil and vegetation, and replacement back to the original location such that the original soil layering and vegetation schemes are approximately the same, unless otherwise authorized.

**19. Sedimentation and Erosion Control.** Adequate sedimentation and erosion control management measures, practices and devices, such as phased construction, vegetated filter strips, geotextile silt fences, stormwater detention and infiltration systems, sediment detention basins, 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. The disturbed areas shall be stabilized and these devices shall be removed upon completion of work. 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.

**20. Bank Stabilization.** Projects involving construction or reconstruction/maintenance of bank stabilization structures within Corps jurisdiction should be designed to minimize environmental effects, effects to neighboring properties, scour, etc. to the maximum extent practicable. Applicants must use the least intrusive method to stabilize the bank, follow the details at Env-Wt 404 Criteria for Shoreline Stabilization and the following sequential minimization process: diversion of water, vegetative stabilization, stone-sloped surfaces, and walls. Vertical bulkheads should only be used in situations where reflected wave energy can be tolerated. This generally eliminates bodies of water where the reflected wave energy may interfere with or impact on harbors, marinas, or other developed shore areas. A revetment is sloped and is typically employed to absorb the direct impact of waves more effectively than a vertical seawall. It typically has a less adverse effect on the beach in front of it, abutting properties and wildlife. For more information, see the Corps Coastal Engineering Manual at <http://chl.erdc.usace.army.mil>. Select “Products/Services” and then “Publications.” Part 5, Chapter 7-8, a(2)c is particularly relevant.

### **21. Waterway/Wetland Work and Crossings**

(a) All temporary and permanent crossings of waterbodies and wetlands shall be suitably culverted, bridged, or otherwise designed to withstand and to prevent the restriction of high flows, to maintain existing low flows, and to not obstruct the movement of aquatic life indigenous to the waterbody beyond the actual duration of construction.

(b) Aquatic Life Movements. No activity may substantially disrupt the necessary life-cycle movements of those species of aquatic life indigenous to the waterbody, including those species that normally migrate through the area, unless the activity’s primary purpose is to impound water.

(c) All temporary and permanent crossings of rivers, streams, brooks, etc. (here on referred to as “streams”) shall conform to the “New Hampshire Stream Crossing Guidelines” when the State has adopted these guidelines as regulations. The Corps shall review projects under the Minor/Major or IP review procedures if conforming to the Guidelines is impractical. The Guidelines typically require bridge spans, open bottom arches or embedded culverts. Bridge spans are generally preferred.

(d) The requirements to comply with the Guidelines in order to proceed as a Minimum Impact Project as stated in (c) above do not apply to the following:

i. Temporary crossings in place for less than 90 days (the requirements in (a) do apply). Temporary culverts must be embedded unless they’re installed during low flow (Jul. 15 – Oct. 1), the appropriate culvert radius is 36 inches or less, and it’s placed on geotextile fabric laid on the stream bed to ensure restoration to the original grade;

ii. Constructed drainage systems designed primarily for the conveyance of storm water or irrigation. Also, non-tidal drainage and irrigation ditches excavated on dry land are not Federally-regulated.

(e) Only maintenance or replacement of serviceable crossings with an exact replica crossing (size, material, elevation, etc.) in the same footprint with no expansion or change in use/circumstances is considered as a maintenance project, and therefore may proceed as a Minimum Impact Project. Any

deviation deems the crossing as “new.” Note: The State of NH’s maintenance provisions differ from the Corps and will likely require reporting and written authorization from the State.

(f) Culverts shall be installed with their inverts embedded below existing streambed grade to avoid “hanging” and associated impediments to fish passage.

(g) Culverts at wetland and waterbody crossings shall be installed in such a manner as to preserve hydraulic connectivity, at its present level, between the wetlands on either side of the road. The permittee shall take necessary measures to correct wetland damage due to lack of hydraulic connectivity.

(h) Projects using slip lining (retrofitting an existing culvert by inserting a smaller diameter pipe), non-corrugated plastic pipes, High Density Polyethylene Pipes (HDPP) or retrofit methods increasing flow velocity, are not allowed to proceed as a Minimum Impact Project, either as new or maintenance work.

(i) No projects involving open trench excavation in flowing waters are allowed to proceed as a Minimum Impact Project. Open trench excavation projects may qualify for the PGP if they are reviewed pursuant to the Minor/Major project review procedures and conditioned to protect the aquatic environment [work should not occur in flowing waters (requires using management techniques such as temporary flume pipes, culverts, cofferdams, etc.) and normal flows are maintained within the stream boundary’s confines (see Appendix A, Endnote 5)]. Projects utilizing these management techniques must meet the other Minimum Impact Project requirements (see Appendix A) and all of this PGP’s terms and general conditions. If not, they will require review under the Minor/Major project review procedures. Projects proposing no management techniques to avoid open trench excavation will require written authorization.

(j) Construction equipment crossing or accessing streams without using temporary bridges, culverts or cofferdams are not eligible as a Minimum Impact Project. (Note: Areas of fill and/or cofferdams must be included in total waterway/ wetlands impacts to determine applicability of this PGP).

(k) For projects that otherwise meet the definition of a Minimum Impact Project, in-stream (e.g., rivers, streams, brooks, etc.) construction work shall be conducted only during the low flow period of Jul. 15 – Oct. 1 in any year. Projects that are conducted outside of that time period are ineligible as a Minimum Impact Project and shall be reviewed pursuant to Minor/Major Impact Project procedures, regardless of the waterway and wetland fill and/or impact area.

(l) Any work that impacts upstream or downstream flooding or wetlands must be reviewed under the Minor/Major Project procedures.

**22. Water Pollution Prevention and Control.** Construction or operation of any activity involving a discharge into a water of the U.S. authorized under this PGP shall be consistent with applicable water quality standards, effluent limitations, standards of performance, prohibitions, and pretreatment standards and management practices established pursuant to the CWA (33 USC 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 to 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 Corps in consultation with the EPA. Any activity involving a discharge of pollutants shall be constructed and operated so that the activity results in no additional discharge of relevant pollutants to impaired waters. Projects will be reviewed to determine if a project may result in a discharge of a relevant pollutant to an impaired water. Any project which may result in a discharge of a relevant pollutant into an impaired water will necessitate a higher-level review. **Unless otherwise notified by the NH DES, applicants may presume that the Section 401 WQC for this PGP constitutes the Section 401 WQC for their Section 404 activity, provided the terms and conditions of this PGP are met.**

**23. Spawning Areas.** Discharges of dredged or fill material, and/or suspended sediment producing activities in fish and shellfish spawning or nursery areas, or amphibian and migratory bird breeding areas, during spawning or breeding seasons shall be avoided. Impacts to these areas shall be minimized to the maximum extent practicable during all times of the year. Information on spawning habitat for



species managed under the Magnuson-Stevens Fishery Conservation and Management Act (i.e., EFH for spawning adults) can be obtained from the NMFS website at: [www.nero.noaa.gov/hcd](http://www.nero.noaa.gov/hcd).

**24. Storage of Seasonal Structures.** Coastal structures such as pier sections, floats, etc., 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. This is intended to prevent structures from being stored on the marsh substrate and the substrate seaward of MHW.

**25. Environmental Functions and Values.** The permittee shall make every reasonable effort to 1) carry out the construction or operation of the work authorized herein in a manner that minimizes adverse impacts on fish, wildlife and natural environmental values, and 2) prohibit the establishment or spread of plant species identified as non-native invasive species by any Federal or State agency. See the section on Invasive Species at [www.nae.usace.army.mil/reg/index.htm](http://www.nae.usace.army.mil/reg/index.htm) for control methods.

**26. Protection of Special Resources (Special Aquatic Sites, Shellfish Beds, Special Wetlands and Vernal Pools).**

These are defined at Appendix A, Endnotes/Definitions. These waters (e.g., riffle and pool complexes) and wetlands are more valuable and may be more sensitive to fragmentation, non-point source runoff, and other secondary impacts. Secondary impacts (e.g., site clearing, grading, and construction activities) should be limited.

Special Aquatic Sites (SAS): Projects with temporary or permanent fill in, or secondary impacts to, SAS (other than inland wetlands) do not qualify for this PGP (see Appendix A). For Minor/Major projects, all SAS (other than inland wetlands) within the project area shall be delineated.

Shellfish beds: Projects proposing to fill or dredge in NH Fish and Game designated shellfish beds (open or closed) used for recreation harvest, whether directly or indirectly, do not qualify for authorization under this PGP and must be reviewed as an Individual Permit project. Applicants must ensure that all projects proposed in or adjacent to any shellfish beds identified on these maps are designed to avoid and minimize adverse affects. Maps of designated shellfish beds used for recreation harvest are located at: [www.nae.usace.army.mil/reg/NHFGRecreatonHarvestShellfishBeds.pdf](http://www.nae.usace.army.mil/reg/NHFGRecreatonHarvestShellfishBeds.pdf).

New Hampshire Special Wetlands: Projects with temporary or permanent fill in, or secondary impacts to special wetlands, do not qualify as a Minimum Impact Project (see Appendix A). For Minor/Major projects, the applicant shall delineate all special wetlands including VPs on the property using Federal delineation methods (see GC 2). The Corps and the DES may waive these delineation requirements on a case-by-case basis after consultation with the each other, the EPA and U.S. FWS. Naturally vegetated upland buffers are especially essential to protect their functions.

Vernal Pools (VP): These are a type of Special Wetland. The applicant must minimize surrounding upland impacts to the greatest extent practicable, with the effort to minimize impacts being commensurate with the value of the VP. Impact minimization should be in accordance with *Best Development Practices: Conserving pool-breeding amphibians in residential and commercial development in the northeastern U.S.*, 2002; Calhoun and Klemens. E.g., site clearing, grading and construction activities should be limited to <25% of the VP seasonal pool terrestrial habitat, and roads and driveways should be excluded from the VP envelope. For Minor/Major Impact projects, the applicant shall delineate all VPs on the property in accordance with Federal boundaries (see GC 2). The Corps may waive this requirement on a case-by-case basis.



## **Procedural Conditions:**

**27. Inspections.** The permittee shall allow the Corps to make periodic inspections at any time deemed necessary in order to ensure that the work is being or has been performed in accordance with the terms and conditions of this permit. The Corps may also require post-construction engineering drawings for completed work, and post-dredging survey drawings for any dredging work.

**28. Maintenance.** The permittee shall maintain the work authorized herein in good condition and in conformance with the terms and general conditions of this permit. Permittees must contact the Corps if maintenance will not take place or if they want to modify the existing project design. The requirement to maintain the authorized work does not include maintenance of dredging projects. Maintenance dredging is subject to the review thresholds in Appendix A and/or any special conditions included in a written Corps authorization. Maintenance dredging includes only those areas and depths previously authorized by the Corps and dredged.

**29. Property Rights.** This PGP 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.

**30. Modification, Suspension, and Revocation.** This PGP 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 U.S.

**31. Restoration Directive.** The permittee, upon receipt of a notice of revocation of authorization under this PGP, shall restore the wetland or waterway to its former conditions without expense to the U.S., 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.

**32. Special Conditions.** The Corps may impose other special conditions on a project authorized pursuant to this PGP that are determined necessary to minimize adverse navigational and/or environmental effects or based on any other factor of the public interest. Failure to comply with all general conditions of the authorization, including special conditions, constitutes a permit violation and may subject the permittee to criminal, civil, or administrative penalties or restoration.

**33. False or Incomplete Information.** If the Corps makes a determination regarding the eligibility of a project under this PGP and subsequently discovers that it has relied on false, incomplete, or inaccurate information provided by the permittee, the PGP authorization may not be valid and the U.S. Government may institute legal proceedings.

**34. Abandonment.** If the permittee decides to abandon the activity authorized under this PGP, unless such abandonment is merely the transfer of property to a third party, he/she may be required to restore the area to the satisfaction of the Corps.

**35. Enforcement cases.** The PGP does not apply to any existing or proposed activity in Corps jurisdiction associated with a Corps or EPA enforcement action until such time as the enforcement action is resolved or the Corps or EPA as appropriate determines that the activity may proceed independently without compromising the enforcement action.

**Duration of Authorization/Grandfathering:**

**36. Duration of Authorization.** Activities authorized under this PGP that have commenced (i.e., are under construction) or are under contract to commence before this PGP's expiration date have the following time allowances to complete the work in Corps jurisdiction:

- For Minimum and Minor Impact Projects that haven't received an authorization letter, 12 months after this PGP's expiration date.
- For projects that have received an authorization letter, until the project-specific date that the Corps provides to the permittee in the PGP authorization letter.

Activities authorized and completed under this PGP will continue to remain authorized after this PGP's expiration date. The permittee must be able to document that the project was under construction or contract by the appropriate date. Activities authorized as a Minor/Major Impact Project under this PGP (or by an Individual Permit) for the transport of dredged or fill material for the purpose of disposing of it in ocean waters will specify a completion date for the disposal not to exceed three years from the date of authorization.

PGP activities will remain authorized as specified above unless:

- The PGP is either modified or is revoked, or
- 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).

**37. Previously Authorized Activities.**

(a) Projects that the Corps authorized under the Nationwide Permits or under the previous NH PGPs prior to issuance of this PGP shall remain authorized as specified in each authorization.

(b) Activities authorized pursuant to 33 CFR 330.3 (activities occurring before certain dates) are not affected by this PGP.

for Christine Godfrey  
DISTRICT ENGINEER

6-28-07  
DATE

## **VI. NH PGP CONTACTS:**

### **1. FEDERAL**

#### **U.S. Army Corps of Engineers**

New England District, Regulatory Branch  
696 Virginia Road  
Concord, MA 01742-2751  
(800) 343-4789, (978) 318-8335  
(978) 318-8303 (fax)

#### **U.S. Fish and Wildlife Service**

70 Commercial Street  
Suite 300  
Concord, NH 02813  
(603) 223-2541

#### **National Park Service**

National Park Service  
North Atlantic Region  
15 State Street  
Boston, MA 02109  
(617) 223-5191

### **2. STATE**

#### **Dept. of Environmental Services**

New Hampshire DES Wetlands Bureau  
29 Hazen Drive  
Concord, NH 03302  
(603) 271-2147  
(603) 271-6588(fax)

New Hampshire Coastal Program  
Suite 200  
50 International Drive  
Portsmouth, NH 03801  
(603) 559-1500, (603) 559-1510 (fax).

### **3. HISTORIC RESOURCES**

#### **NH State Historic Preservation Officer**

Department of Cultural Affairs  
Division of Historical Resources  
19 Pillsbury Street  
Concord, NH 03301  
(603) 271-3483

#### **U.S. Environmental Protection Agency**

Region 1  
1 Congress Street, Suite 1100  
Boston, MA 02114-2023  
(617) 918-1589

#### **Federal Endangered Species & EFH**

##### **National Marine Fisheries Service**

Northeast Region  
One Blackburn Drive  
Gloucester, MA 01930  
(978) 281-9102

#### **Natural Resources Conservation Service**

Federal Building  
2 Madbury Road  
Durham, NH 03824-2043  
(603) 868-7581

#### **(State Endangered Species)**

NH Fish and Game Department.  
Non-Game Endangered Wildlife Program  
2 Hazen Drive  
Concord, NH 03302-0095  
(603) 271-3421

#### **Dept. of Resources & Economic Development**

Natural Heritage Bureau  
172 Pembroke Rd.  
P.O. Box 1856  
Concord, NH 03302  
(603) 271-3623

#### 4. ORGANIZATIONAL WEBSITES:

Army Corps of Engineers	<a href="http://www.nae.usace.army.mil/reg/index.htm">www.nae.usace.army.mil/reg/index.htm</a>
Army Corps of Engineers Headquarters	<a href="http://www.usace.army.mil">www.usace.army.mil</a> (click "Obtain a Permit?")
Environmental Protection Agency	<a href="http://www.epa.gov/owow/wetlands">www.epa.gov/owow/wetlands</a>
National Marine Fisheries Service	<a href="http://www.nero.noaa.gov/hcd">www.nero.noaa.gov/hcd</a> (northeast region)
	<a href="http://www.nmfs.noaa.gov/habitat">www.nmfs.noaa.gov/habitat</a> (national headquarters)
U.S. Fish and Wildlife Service	<a href="http://www.fws.gov">www.fws.gov</a>
National Park Service	<a href="http://www.nps.gov/rivers/index.html">www.nps.gov/rivers/index.html</a>
NH DES Wetland Bureau	<a href="http://www.des.state.nh.us/wetlands">www.des.state.nh.us/wetlands</a>
NH wetland rules (Adopted Rule 97-010)	<a href="http://www.des.state.nh.us/wetlands/pdf/100-800.pdf">www.des.state.nh.us/wetlands/pdf/100-800.pdf</a>
NH Fish and Game Department	<a href="http://www.wildlife.state.nh.us">www.wildlife.state.nh.us</a>
New Hampshire Coastal Program	<a href="http://www.des.nh.gov/Coastal">www.des.nh.gov/Coastal</a>
NH Division of Historical Resources	<a href="http://www.nh.gov/nhdhr">www.nh.gov/nhdhr</a>
NH GIS	<a href="http://www.granit.sr.unh.edu">www.granit.sr.unh.edu</a>

## APPENDIX A: DEFINITION OF CATEGORIES

The Corps must review all projects not qualifying as a Minimum Impact Project as a Minor, Major or Individual Permit project. All Minimum, Minor/Major Impact Projects must comply with all of this PGP's applicable terms (Pages 1 - 7) and general conditions (GCs) (Pages 8 - 17). Proponents must read the entire PGP and Appendices to determine the reporting requirements for their project. E.g., a project may appear to qualify as a Minimum Impact Project when reviewing "(c) BANK STABILIZATION PROJECTS." However, if the project fills over 3,000 SF of wetlands or waterways (see (a) NEW FILL/EXCAVATION DISCHARGES below), impacts historic properties (GC 7, Page 9), endangered species, (GC 9, Page 10), or doesn't meet the Minimum Impact Project requirements stated in any other general condition(s), Corps review is required.

### I. INLAND WATERS & WETLANDS

**Inland Waters and Wetlands:** Waters that are regulated under Section 404 of the CWA, including rivers, streams, lakes, ponds and wetlands [33 CFR 328.4)(c)]. This Inland Waters and Wetlands section excludes tidal waters, but regulates fill in the Federally-designated navigable waters (Merrimack River from the MA-NH State line to Concord, NH); Lake Umbagog within NH; and the Connecticut River to Pittsburg, NH. The jurisdictional limits are the ordinary high water (OHW) mark in the absence of adjacent wetlands, beyond the OHW mark to the limit of adjacent wetlands when adjacent wetlands are present, and the wetland limit when only wetlands are present. For the purposes of this PGP, fill placed in the area between the mean high water (MHW) and the high tide line (HTL), and in the bordering and contiguous wetlands<sup>1</sup> to tidal waters are reviewed in II. Tidal/Navigable Waters (see Page 4 below).

	MINIMUM IMPACT PROJECTS <sup>2</sup>	MINOR & MAJOR IMPACT PROJECTS	INDIVIDUAL PERMIT
(a) NEW FILL/ EXCAVATION DISCHARGES	<p>&lt;3,000 SF of waterway and/or wetland fill and secondary<sup>3</sup> impacts, (e.g., areas drained, flooded, cleared, excavated or fragmented). Fill area includes all temporary and permanent fill, and certain excavation discharges (except for incidental fallback<sup>4</sup>). Swamp mats and corduroy roads are considered as fill (see General Condition (GC) 17).</p> <p><u>Provided:</u></p> <ul style="list-style-type: none"> <li>• Projects comply w/all GCs, including: GC 5 - Single and Complete Projects GC 15 - Avoidance, Minimization and Mitigation</li> </ul> <p><u>This category excludes:</u></p> <ul style="list-style-type: none"> <li>• Dams, dikes, or activities involving water diversions<sup>5</sup>.</li> <li>• Work in EFH waters (see GC 10 and Appendix C)</li> <li>• Work in special aquatic sites (SAS)<sup>6</sup> other than wetlands, and work in special wetlands<sup>7</sup> [including vernal pools<sup>7</sup> (VPs)].</li> <li>• Work on Corps properties &amp; Corps-controlled easements<sup>8</sup></li> </ul>	<p>3,000 SF to ≤3 acres waterway and/or wetland fill and secondary<sup>3</sup> impacts, (e.g., areas drained, flooded, cleared, excavated or fragmented). Fill area includes all temporary and permanent fill, and certain excavation discharges (except for incidental fallback<sup>4</sup>). Swamp mats and corduroy roads are considered as fill (see GC 17).</p> <p>Swamp mats filling any area ≥3,000 SF are reviewed as Minor Impact Projects (see GCs 16 &amp; 17).</p> <p>Projects with proactive restoration<sup>9</sup> as a primary purpose with impacts of any size ≥3,000 SF.</p> <p>Specific activities with impacts ≥3,000 SF required to effect the containment, stabilization, or removal of hazardous or toxic waste materials performed, ordered or sponsored by a government agency with established legal or regulatory authority. Wetlands must be restored in place.</p> <p>The applicant shall delineate all special wetlands<sup>7</sup> including VPs on the property using Federal delineation methods (see GC 2). The Corps and the DES may waive these delineation requirements on a case-by-case basis after consultation with each other, the EPA and U.S. FWS.</p>	<p>&gt;3 acres waterway and/or wetland fill and secondary<sup>3</sup> impacts, (e.g., area drained, flooded, cleared, excavated or fragmented). Fill area includes all temporary and permanent fill, and certain excavation discharges (except for incidental fallback<sup>4</sup>).</p>

<p>(b) RIVER/STREAM /BROOK WORK &amp; CROSSINGS.</p> <p>WATERWAY/ WETLAND CROSSINGS</p>	<p>Stream crossings conform with the NH Stream Crossing Guidelines, when the State has adopted these guidelines as regulations, and this PGP’s general conditions. The requirements in GC 21 are especially relevant:</p> <ul style="list-style-type: none"> <li>• In-stream work limited to Jul 15-Oct 1.</li> <li>• Culverts installed with inverts embedded below existing streambed grade to avoid “hanging” &amp; associated impediments to fish passage.</li> <li>• Culverts at waterbody crossings preserve hydraulic connectivity, at its present level, between the wetlands on either side of the road.</li> </ul> <p><u>Excludes:</u></p> <ul style="list-style-type: none"> <li>• Slip lining, plastic pipes, HDPP &amp; flow velocity increases (GC 21)</li> <li>• No open trench excavation in flowing waters (GC 21).</li> <li>• In-stream work limited to Jul 15-Oct 1 (GC 21).</li> <li>• Work in SAS<sup>6</sup> and special wetlands<sup>7</sup> (GC 26).</li> <li>• Work in EFH waters (see GC 10 and Appendix C).</li> <li>• No work on Corps properties &amp; Corps-controlled easements<sup>8</sup>.</li> </ul>	<p>Stream crossings not conforming with the NH Stream Crossing Guidelines, when the State has adopted these guidelines as regulations.</p> <p>All SAS<sup>6</sup> &amp; special wetlands<sup>7</sup> within the project area shall be delineated.</p>	
<p>(c) BANK STABILIZATION PROJECTS</p>	<p>Inland bank stabilization &lt;100 FT long and &lt;1 CY of fill per linear foot below ordinary high water (OHW)</p> <p><u>Provided:</u></p> <ul style="list-style-type: none"> <li>• In-stream work limited to Jul 15-Oct 1.</li> <li>• No work in VPs<sup>7</sup></li> <li>• No work in SAS<sup>6</sup> and special wetlands<sup>7</sup>.</li> <li>• No open trench excavation in flowing waters (see GC 21).</li> <li>• No structures angled steeper than 3H:1V allowed. Only rough-faced stone or fiber roll revetments allowed.</li> <li>• No work on Corps properties &amp; Corps-controlled easements<sup>8</sup>.</li> </ul>	<p>Inland bank stabilization projects ≥100 FT long or ≥1 CY per linear foot below OHW.</p> <p>All SAS<sup>6</sup> &amp; special wetlands<sup>7</sup> within the project area shall be delineated. The Corps may waive this requirement on a case-by-case basis in consultation with the EPA, NMFS and U.S. FWS.</p>	
<p>(d) REPAIR AND MAINTENANCE OF AUTHORIZED FILLS</p>	<p>Repair/maintenance of existing, currently-serviceable, authorized fills, including maintenance of existing flood control facilities, with no expansion or change in use.</p> <ul style="list-style-type: none"> <li>• Conditions of the original authorization apply</li> <li>• Minor deviations in fill design allowed<sup>10</sup>.</li> </ul> <p>Note: The State’s maintenance provisions differ from the Corps and may require written authorization from the State, even though it’s not required from the Corps.</p>	<p>Repair/maintenance of existing, currently-serviceable, authorized fills, with an expansion or a change in use ≥3000 SF and &lt;3 acres.</p> <p>Replacement of non-serviceable authorized fills ≥3000 SF and &lt;3 acres.</p>	<p>Repair/maintenance of existing, currently-serviceable, authorized fills, with an expansion or a change in use ≥3 acres.</p> <p>Replacement of non-serviceable authorized fills, ≥3 acres.</p>
<p>(e) MISC.</p>	<p>Oil spill clean-up discharges. Fish and wildlife harvesting such as duck blinds. Scientific measurement devices and survey activities, e.g., exploratory drilling, surveying, sampling. Doesn’t include oil/gas exploration and fills for roads or construction pads. Includes monitoring wells.</p>		

<b>II. TIDAL/ NAVIGABLE WATERS</b>	<b>Tidal/Navigable Waters of the U.S.:</b> Waters that are subject to the ebb and flow of the tide (Section 10 Rivers & Harbors Act of 1899) (33 CFR 329) and <i>structures and dredging</i> in the Federally-designated navigable waters, which are regulated below in Activities (b), (c), (d), (e) and (f). ( <i>Fill</i> in the Federally-designated navigable waters are regulated in I. Inland Waters and Wetlands above.) The Federally-designated navigable waters are the Merrimack River from the MA-NH State line to Concord, NH; Lake Umbagog within NH; and the Connecticut River to Pittsburg, NH. The jurisdictional limits for this section, II. Tidal/Navigable Waters, are the mean high water (MHW) line in tidal waters and the OHW mark in non-tidal portions of the Federally designated navigable waters. For the purposes of this PGP, fill placed between MHW and the high tide line (HTL) and in the bordering and contiguous wetlands <sup>1</sup> to tidal waters are reviewed in this Tidal/Navigable Waters section.					
Projects not meeting the Minimum Project criteria must apply/report to the Corps as either a Minor/Major Project or Individual Permit project. All Minimum or Minor/Major projects must comply with all of this PGP's applicable terms (Pages 1-7) and General Conditions (Pages 8-17).						
<table border="1" style="width:100%; border-collapse: collapse;"> <tr> <th style="width:33%; text-align: left;">MINIMUM PROJECTS <sup>2</sup></th> <th style="width:33%; text-align: left;">MINOR &amp; MAJOR PROJECTS</th> <th style="width:33%; text-align: left;">INDIVIDUAL PERMIT (IP)</th> </tr> </table>				MINIMUM PROJECTS <sup>2</sup>	MINOR & MAJOR PROJECTS	INDIVIDUAL PERMIT (IP)
MINIMUM PROJECTS <sup>2</sup>	MINOR & MAJOR PROJECTS	INDIVIDUAL PERMIT (IP)				
(a) FILL	No new or previously unauthorized fills, other than: <ul style="list-style-type: none"> <li>Discharges of dredged or fill material incidental to the construction of bridges across navigable waters of the U.S., 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 Minor/Major or Individual Permit authorization.</li> </ul>	≤1 acre waterway fill and secondary waterway impacts (e.g., areas drained, flooded, cleared, or fragmented). Fill area includes all temporary and permanent waterway fills. Excludes work in SAS <sup>6</sup> and shellfish beds <sup>11</sup> . <p>Specific activities with impacts of any area required to effect the containment, stabilization, or removal of hazardous or toxic waste materials performed, ordered or sponsored by a government agency with established legal or regulatory authority. Wetlands must be restored in place.</p> Projects with proactive restoration <sup>9</sup> (SAS <sup>6</sup> , anadromous fish runs, shellfish beds <sup>11</sup> , etc.) as a primary purpose with impacts of any size.	>1 acre waterway fill and secondary waterway impacts (e.g., areas drained, flooded, cleared or fragmented). Fill area includes all temporary and permanent waterway fills. <p>Temporary or permanent fill and/or excavation in SAS<sup>6</sup> or shellfish beds<sup>11</sup>.</p> EIS required by the Corps.			
(b) REPAIR AND MAINT. WORK	Repair or maintenance of existing, currently serviceable, authorized structures and fills. <p><u>Provided:</u></p> <ul style="list-style-type: none"> <li>No expansion or change in use.</li> <li>Must be rebuilt in same footprint, however minor deviations in structure design allowed.<sup>10</sup></li> </ul>	Repair/maintenance of currently serviceable authorized fills with expansion or a change in use <1 acre. <p>Replacement of non-serviceable authorized fills, including expansion or a change in use &lt;1 acre.</p> Repair/maintenance of currently serviceable authorized structures w/expansion where the structure (existing + expansion) qualifies as a Minor/Major [see (e) below]. <p>Replacement of non-serviceable authorized structures w/expansion where the structure (existing + expansion) qualifies as a Minor/Major [see (e) below].</p>	Repair/maintenance of currently serviceable authorized fills with expansion or a change in use ≥1 acre. <p>Replacement of non-serviceable authorized fills, including expansion or a change in use, totaling ≥1 acre.</p> Repair/maintenance of currently serviceable, authorized structures w/expansion where the structure (existing + expansion) qualifies for an IP [see (e) below]. <p>Replacement of non-serviceable, authorized structures where the structure (existing + expansion, if any) qualifies for an Individual Permit [see (e) below].</p>			

<p>(c) DREDGING</p>	<p>For waters that are subject to the ebb and flow of the tide, maintenance dredging<sup>13</sup> for navigational purposes ≤3,000 SF with upland disposal. Includes return water from upland contained disposal area.</p> <p><u>Provided:</u></p> <ul style="list-style-type: none"> <li>• Dredging &amp; disposal operation limited to Nov 15 – Mar 15.</li> <li>• No impacts to SAS<sup>6</sup> or shellfish beds<sup>11</sup>.</li> <li>• No dredging in intertidal areas.</li> <li>• Proper siltation controls are used.</li> </ul> <p>For Federally-designated navigable waters (see definition of Tidal/Navigable Waters of the U.S. above), maintenance dredging<sup>13</sup> ≤3,000 SF with upland disposal. Includes return water from upland contained disposal area.</p>	<p>For waters that are subject to the ebb &amp; flow of the tide, maintenance dredging<sup>13</sup> &gt;3,000 SF or new dredging<sup>13</sup> &lt;20,000 SF.</p> <p><u>Provided:</u></p> <ul style="list-style-type: none"> <li>• Dredging &amp; disposal operation limited to Nov 15-Mar15.</li> <li>• No impacts to SAS<sup>6</sup> or shellfish beds<sup>11</sup>.</li> <li>• Disposal includes: 1.upland; 2.beach nourishment of any size provided the primary purpose of the dredging is navigation; or 3.open water &amp; confined aquatic disposal, if Corps, in consultation with Federal and State agencies, finds the material suitable.</li> </ul> <p>For Federally-designated navigable waters (see def. of Tidal/Navigable Waters of the U.S. above), maintenance<sup>12</sup> dredging of any area &gt;3,000 SF or new dredging<sup>12</sup> of any area. Includes return water from upland contained disposal area.</p> <p>Projects with proactive restoration<sup>9</sup> (SAS<sup>6</sup>, shellfish beds<sup>11</sup>, anadromous fish run, etc.) as a primary purpose with impacts of any size.</p> <p>Specific activities with impacts of any area or cubic yardage required affecting 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 may be reviewed as a Minor/Major project. Wetlands must be restored in place.</p> <p>All SAS<sup>6</sup> and shellfish beds<sup>11</sup> within the project area shall be delineated.</p>	<p>New dredging<sup>13</sup> ≥20,000 SF</p> <p>Dredging for non-navigational purposes (sand mining). E.g., the primary purpose of obtaining the sand is for beach nourishment or upland use.</p>
<p>(d) MOORINGS</p>	<p>Private, non-commercial, non-rental, single-boat moorings.</p> <p><u>Provided:</u></p> <ul style="list-style-type: none"> <li>• Proper/eco-friendly moorings are used so chains or other connections do not rest on the bottom in veg. shallows<sup>15</sup>.</li> <li>• Authorized by the State.</li> <li>• Not associated with a boating facility<sup>14</sup>.</li> <li>• Moorings in Federal Anchorage<sup>12</sup> not associated with a boating facility<sup>14</sup>.</li> <li>• Not located within the buffer zone of the horizontal limits of a Federal Channel<sup>12</sup>.</li> <li>• No interference with navigation.</li> </ul>	<p>Moorings not meeting the terms of a Minimum project.</p> <p>Moorings located such that they, and/or vessels docked or moored at them, are within the buffer zone of the horizontal limits of a Federal Channel<sup>12</sup>.</p>	<p>Moorings and/or their moored vessels within the horizontal limits of a Federal Channel<sup>12</sup>.</p>



(e) PILE-SUPPORTED STRUCTURES AND FLOATS	No allowances for pile-supported structures and floats.	<p>All SAS<sup>6</sup> and shellfish beds<sup>11</sup> within the project area shall be delineated.</p> <p>Recommendations for private structures and floats:</p> <ul style="list-style-type: none"> <li>• Bottom-anchored floats <math>\leq 400</math> SF</li> <li>• Pile-supported structures for navigational access to the waterway <math>\leq 400</math> SF with attached floats <math>\leq 150</math> SF.</li> <li>• Pile-supported structures are <math>\leq 6'</math> wide and have at least a 1:1 height:width ratio<sup>16</sup>.</li> <li>• Float stops, chains, or other devices must be used to provide <math>\geq 2.5</math>-foot clearance between the bottom of the float and the substrate during all tides.</li> <li>• Pile-supported structures &amp; floats are not located within 25' of vegetated shallows<sup>15</sup> and moored vessels are not positioned over SAS<sup>6</sup>.</li> <li>• Structures extend <math>\leq 75</math> FT waterward from MHW.</li> <li>• No structure extends across <math>&gt;25\%</math> of the waterway width at MLW.</li> <li>• Not located within the buffer zone of the horizontal limits of an FNP<sup>12</sup>.</li> </ul>	<p>Structures or floats located such that they and/or vessels docked at them are within the horizontal limits of an FNP<sup>12</sup>.</p> <p>Structures or floats associated with a new or previously unauthorized boating facility.<sup>14</sup></p>
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	<b>MINIMUM PROJECTS<sup>2</sup></b>	<b>MINOR &amp; MAJOR PROJECTS</b>	<b>IP</b>
(f) MISC.	<p>Activities not regulated by the DES Wetlands Bureau, formerly authorized under the Nationwide Permit Program and listed in <b>Appendix A</b> of this document.</p> <p>Research, educational, experimental or publicly funded aquaculture projects that don't exceed 1,000 SF in area, aren't located in SAS<sup>6</sup> or intertidal areas, culture only indigenous species, use only "transient gear" type cages or bottom culture with predator netting, are marked to inform mariners of the location of the gear, have a minimum clearance of 4 FT between the top of the gear and the elevation of MLW in areas where the elevation of the sea floor is above - 15 FT MLW, have a minimum clearance of 10 FT between the top of the gear and the elevation of MLW in areas where the elevation of the sea floor is equal to or below -15 FT MLW, and have been reviewed and approved in writing by the NH DES.</p> <p>Temporary oil spill clean up structures and fill.</p> <p>Temporary buoys, markers, floats, etc. for recreational use during specific events, provided:</p> <ul style="list-style-type: none"> <li>• They are in place for no more than 30 days and are removed within 15 days after use is discontinued.</li> <li>• Proper/eco-friendly moorings must be used so chains or other connections don't rest on the bottom for buoys, floats and vessels located over vegetated shallows<sup>15</sup></li> </ul>	<p>Aquaculture projects that do not meet the terms of a Minimum Impact Project and aren't located in SAS<sup>6</sup>.</p> <p>Structures/work in or affecting tidal or navigable waters that are not defined under any other headings. Includes but is not limited to utility lines, aerial transmission lines, pipelines, outfalls, boat ramps, bridges, tunnels and horizontal directional drilling activities seaward of the MHW line.</p>	EIS required by the Corps.

	<ul style="list-style-type: none"> <li>• Float stops, chains, or other devices must be used to provide <math>\geq 2.5</math>-foot clearance between the bottom of the float and the substrate during all tides</li> </ul> <p>Temporary buoys, markers, floats, etc. for recreational use during specific events at Corps reservoirs. The reservoir manager must approve each buoy or marker individually.</p> <p>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 66, Chapter I, subchapter C).</p> <p>Structures, buoys, floats and other devices placed within anchorage or fleeting areas to facilitate moorage of vessels where such areas have been established for that purpose by the U.S. Coast Guard, provided:</p> <ul style="list-style-type: none"> <li>• Placement in the area is away from vegetated shallows</li> <li>• If the above isn't possible, proper/eco-friendly moorings are used so chains or other connections don't rest on the bottom in veg. shallows<sup>15</sup>.</li> <li>• Float stops, chains, or other devices must be used to provide <math>\geq 2.5</math>-foot clearance between the bottom of the float and the substrate during all tides</li> </ul> <p>Scientific measurement devices, and small weirs and flumes constructed primarily to record water quantity and velocity provided the discharge of fill is limited to 10 cubic yards. No work may restrict movement of aquatic species or potentially threaten to impact or entangle sea turtles or marine mammals in near-coastal waters.</p> <p>Fish and wildlife harvesting devices and activities such as pound nets, crab traps, crab dredging, eel pots, lobster traps, duck blinds, clam and oyster digging, shellfish seeding, and small fish attraction devices such as open water fish concentrators (sea kites, etc.). Provided: no hazard to navigation; activity is not in wetlands or sites that support submerged vegetation (including sites where submerged aquatic vegetation is determined to exist, but may not be present in a given year). This does not authorize artificial reefs or impoundments and semi-impoundments of waters of the U.S. for the culture or holding of motile species such as lobster, or the use of covered oyster trays or clam racks.</p> <p>Survey activities including core sampling, seismic exploratory operations, plugging of seismic shot holes, other exploratory-type bore holes and oil and gas test wells, soil survey and sampling, and historic resources surveys. Discharges and structures associated with the recovery of historic resources are not authorized. Drilling and the discharge of excavated material from test wells for oil and gas exploration are not authorized. Fill placed for roads, pads and other similar activities is not authorized, nor is any permanent structure.</p>		
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## End Notes/Definitions

<sup>1</sup> **Bordering and Contiguous Wetlands:** A bordering wetland is immediately next to its adjacent waterbody and may lie at, or below, the OHW mark (MHW in navigable waters) of that waterbody and is directly influenced by its hydrologic regime. Contiguous wetlands extend landward from their adjacent waterbody to a point where a natural or manmade discontinuity exists. Contiguous wetlands include bordering wetlands as well as wetlands that are situated immediately above the ordinary high water mark and above the normal hydrologic influence of their adjacent waterbody. Note, with respect to the Federally designated navigable rivers, the wetlands bordering and contiguous to the tidally influenced portions of those rivers are reviewed under “II. Navigable Waters.”

<sup>2</sup> **Regulation:** Either DES or NHCP must regulate an activity for it to be eligible for authorization as a Minimum Impact Project of this NH PGP. The Minimum Impact Project category does not apply to activities exempt from State regulation. These activities must report to the Corps.

### <sup>3</sup> **Direct, Secondary (Indirect), and Cumulative Impacts:**

Direct Impacts: The immediate loss of aquatic ecosystem within the footprint of the fill.

Secondary (Indirect) impacts: These are effects on an aquatic ecosystem that are associated with a discharge of dredged or fill materials, but do not result from the actual placement of the dredged or fill material. (40 CFR 230.11 (h)). Secondary impacts are those impacts outside the footprint of the fill (e.g., beyond the bounds of the disposal site) that arise from and are associated with the direct discharge of dredged or fill material. Some examples are: I) Habitat Fragmentation. This occurs when a relatively undisturbed habitat block is interrupted or broken apart by roads, ditches, disturbance of vegetation, or development of structures. II) Interruption of Travel Corridors. Travel corridors are routes that many species travel on to find food, mates, shelter, and cover. Many aquatic species follow stream channels and wetlands, and follow established routes season after season. III) Vernal Pools. These are critically important breeding habitats for amphibians. Many amphibians disperse several hundred feet from their breeding ponds into the adjacent upland habitat after the breeding season has ended. IV) Hydrology, hydrological functions and non-point source impacts: A) Interference with the migration or movement of fish and shellfish from one area to another, such as placement of a dam eliminating access to spawning grounds for anadromous fish. B) Greater amounts of sediment, nutrients, and other pollutants such as lead, oil, gas, and salt that could impact wetlands and streams. Sediment causes turbidity, which reduces aquatic life and usually transports pesticides, heavy metals and other toxins into streams. This is especially a concern in watersheds where the streams are already listed as impaired by NHDES. C) Submerged aquatic vegetation is very dependent on light transmission and small changes in ambient turbidity can preclude it from growing in certain areas. D) Trout spawning areas are selected in areas that are well flushed and aerated, and new amounts of deposition may result in a spawning area being eliminated due to siltation of fish eggs. E) Physical effects such as erosion, accretion, entrenchment, sedimentation, embedment, channel or shoreline migration and failure to pass bedload material, organic matter and large woody debris.

Cumulative Impacts: The extent of past, present, and foreseeable developments in the area may be an important consideration in evaluating the significance of a particular project's impacts. Although the impacts associated with a particular discharge may be minor, the cumulative effect of numerous similar discharges can result in a large impact. Cumulative impacts should be estimated only to the extent that they are reasonable and practical.

<sup>4</sup> **Incidental Fallback:** The term “discharge of dredged or fill material” also includes certain discharges resulting from excavation.

<sup>5</sup> **Water Diversions:** Water diversions are activities such as bypass pumping or water withdrawals. Temporary flume pipes, culverts or cofferdams where normal flows are maintained within the stream boundary's confines aren't water diversions. “Normal flows” are defined as no change in flow from pre-project conditions. See GC 21.

<sup>6</sup> **Special Aquatic Sites:** These include both inland & saltmarsh wetlands, mud flats, vegetated shallows<sup>15</sup>, coral reefs, and riffle & pool complexes. (40 CFR 230).

<sup>7</sup> **Special Wetlands:** These include 1. enriched/calcareous seepage swamps, estuarine wetlands, floodplains, peatlands, unique basin swamps/marshes, and vernal pools, 2. all wetlands that provide habitat for threatened or endangered species, and 3. all exemplary wetland natural community occurrences as designated by the NH Natural Heritage Bureau (NHNHB). The wetland types provided in 1 above are expanded below and fully described in Natural Community Systems of New Hampshire and Natural Communities of New Hampshire, which are available at [www.dred.state.nh.us/divisions/forestandlands/bureaus/naturalheritage/](http://www.dred.state.nh.us/divisions/forestandlands/bureaus/naturalheritage/). Note: The Corps will use the definition of vernal pools that is listed below, not the definition in the above documents. The applicant is required to have NHNHB check the wetland types listed in 2 and 3 above by either requesting a hard copy review or using their DataCheck Tool at [www2.des.state.nh.us/nhb%5Fdatacheck/](http://www2.des.state.nh.us/nhb%5Fdatacheck/).

**Enriched/Calcareous seepage swamps:** Wetlands characterized by the discharge of enriched groundwater. Floristic composition is an indicator of these conditions.

- Calcareous sloping fen system
- Circumneutral seepage swamp (natural community)
- Circumneutral hardwood forest seep (natural community)
- Calcareous riverside seep (natural community)
- Red maple-black ash-swamp saxifrage swamp (natural community)
- Northern hardwood-black ash-conifer swamp (natural community)

**Estuarine wetlands:** Wetland communities occurring in subtidal and intertidal coastal habitats connected to the ocean but semi-enclosed by land and protected from high-energy wave action. These wetlands are periodically exposed and flooded by tides.

- Salt marsh system
- Brackish tidal riverbank marsh system
- Sparsely vegetated intertidal system
- Subtidal system

**Floodplains:** Areas of low land along a watercourse that are subject to periodic flooding and sediment deposition.

- Montane/near boreal floodplain system
- Major river silver maple floodplain system
- Temperate minor river floodplain system
- Swamp white oak floodplain forest (natural community)

**Peatlands:** Peat-accumulating wetlands, including bogs, fens, cedar swamps, which are often dominated with sphagnum moss, heath family plants and sedges.

- Alpine/subalpine bog system
- Kettle hole bog system
- Poor level fen/bog system
- Medium level fen system
- Montane sloping fen system
- Patterned fen system
- Calcareous sloping fen system
- Black spruce peat swamp system
- Coastal conifer peat swamp system
- Temperate peat swamp system
- Near-boreal minerotrophic peat swamp system

**Unique basin swamps/marshes:** Closed wetland basins with no inlet or outlet and broadly fluctuating water levels that contain unique plant species composition. This includes both swamps and sand plain marshes.

- Sandy pond shore system
- Sand plain basin marsh system
- Swamp white-oak basin swamp (natural community)
- Red maple-black gum basin swamp (natural community)

**Vernal Pool (VP) and Habitat:** VPs are confined basin depressions with water for two or more continuous months in the spring and/or summer, for which evidence of one of more of the following indicator vernal pools 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. Vernal pool habitat is the seasonal pool depression, seasonal pool envelope (100 FT radius from the VP edge) and seasonal pool terrestrial habitat (750 FT radius from the VP edge). The Corps will determine on a case-by-case basis which vernal pools are within their jurisdiction.

<sup>8</sup> **Corps Properties & Easements:** Contact the Corps, Real Estate Division (978) 318-8580 to initiate reviews about both Corps holdings and permit requirements.

<sup>9</sup> **Restoration:** The manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural/historic functions to a former wetland (called re-establishment) or a degraded wetland (called rehabilitation). Restoration means the result of actions which, in the opinion of the Federal and State resource agencies, reinstates, or will reinstate, insofar as possible, the functions and values of a wetland which has been altered. Restoration is the re-creation or rehabilitation of wetland ecosystems whose natural functions have been destroyed or impaired. The Corps will decide if a project qualifies as proactive restoration and must determine in consultation with Federal and State agencies that the net effects are beneficial.

<sup>10</sup> **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.

<sup>11</sup> **Shellfish Beds:** Shellfish beds (open or closed) used for recreation harvest as designated by the NH Fish and Game Department. Maps of these shellfish beds are located at: [www.nae.usace.army.mil/reg/NHFGRecreationHarvestShellfishBeds.pdf](http://www.nae.usace.army.mil/reg/NHFGRecreationHarvestShellfishBeds.pdf).

<sup>12</sup> **Federal Navigation Projects (FNPs):** FNPs are comprised of Federal channels and Federal anchorages. See Appendix D for a list of FNPs. Contact the Corps for specific locations and information. **Horizontal Limits:** The outer edge of an FNP. **Buffer zone:** Equal to three times the authorized depth of that channel.

<sup>13</sup> **Maintenance Dredging.** Includes areas and depths previously dredged and authorized by the Corps. Proof of authorization is required. **New Dredging:** Includes dredging proposed in previously un-dredged areas and/or in areas exceeding previously authorized dimensions (deeper or wider than previously authorized) excluding normal overdrudge.

<sup>14</sup> **Boating Facilities:** Facilities that provide, rent or sell mooring space, e.g., marinas, yacht clubs, boat yards, dockominiums.

<sup>15</sup> **Vegetated Shallows:** Subtidal areas that support rooted aquatic vegetation such as eelgrass (*Zostera marina*) and widgeon grass (*Ruppia maritima*). (Doesn't include salt marsh.)

<sup>16</sup> **Height:Width Ratio:** The height of structures shall at all points be equal to or exceed the width of the deck. For the purpose of this definition, height shall be measured from the marsh substrate to the bottom of the longitudinal support beam.



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

**U.S. Army Corps of Engineers  
Programmatic General Permit (PGP)  
Appendix B - Required Information and Corps Secondary Impacts Checklist**

In order for the Corps of Engineers to properly evaluate your application, applicants must submit the following information along with the DES Wetlands Bureau application or permit notification forms. Some projects may require more information. For a more comprehensive checklist, see [www.nae.usace.army.mil/reg/Application\\_PlanGuidelines.doc](http://www.nae.usace.army.mil/reg/Application_PlanGuidelines.doc). Check with the Corps at (978) 318-8832 for project-specific requirements. For your convenience, this Appendix B is also attached to the State of New Hampshire DES Wetlands Bureau application and Permit by Notification forms.

**Required information for all projects:**

- 8½"x11" plans: Locus map, plan views of the entire property and project limits with existing and proposed conditions. On each plan show the NGVD 1929 equivalent for the project's vertical datum with the vertical units. Do not use local datum.

**Required information for Federal inland (Section 404) wetland/waterway fill projects:**

- Complete the "Corps Secondary Impacts Checklist" provided on the following page;
- Each plan should show the ordinary high water (OHW) line in the absence of a contiguous wetland.
- National Wetlands Inventory Map(s) ([www.fws.gov/nwi/](http://www.fws.gov/nwi/)) showing the impacted wetland system(s);
- For Minor/Major Impact Projects, delineate special aquatic sites (SAS) and special wetlands, including vernal pools [see General Condition (GC) 26].

**Information typically required for stream crossing projects (perennial and intermittent unless otherwise specified):**

- Rosgen classification for perennial streams. See Applied River Morphology, Dave Rosgen, 1996;
- PE stamp on all perennial stream projects when required by the State;
- Crossing impact analysis of hydraulic capacity, hydrogeomorphic compatibility, watershed size above a crossing, upstream and downstream direct and secondary impacts from a proposed crossing;
- Stream bank full, and bank dimensions, channel dimensions, extent of the floodplain prone area;
- Crossing impact assessment to wildlife and fisheries and aquatic organisms (pre- and post design) including direct and secondary impacts;
- Replacements: an analysis of current crossing compatibility, stability of upstream and downstream channel and bank, recent scour events, systems analysis on hydrology, ecological stability and sediment loading.

**Required information for projects in tidal waters:**

- Each plan should show the mean high water (MHW), mean low water (MLW), mean lower low water (MLLW), high tide line (HTL) or other tidal datum;
- Delineate special aquatic sites (SAS) and special wetlands (see GC 26);
- Show or state the size of the waterbody;
- Limits of any Federal Navigation Project (FNP) within 100' of the project area and State Plane Coordinates for the limits of the proposed work closest to the FNP;
- Volume, type, and source of fill material to be discharged into waters and wetlands, including the area(s) (in square feet or acres) of fill in wetlands and the areas below the HTL.

**Required information for tidal water dredge projects:**

- Sediment testing, including physical (e.g., grain-size analysis), chemical and biological testing. For projects proposing open water disposal, applicants should contact the Corps as early as possible regarding sampling and testing protocols. Sediment sampling and testing without such contact would be at the applicant's risk;
- Any existing sediment grain size and bulk sediment chemistry data;
- Nature of material (e.g., silty sand);
- Any nearby projects;
- The area in square feet and volume of material to be dredged below HTL;
- Existing and proposed water depths;
- Type of dredging equipment to be used;
- Location of the disposal site (include locus sheet);
- Information on the location and nature of municipal or industrial discharges and occurrence of any contaminant spills in or near the project area;
- Shellfish survey;
- Identify and describe potential impacts to essential fish habitat (see GC 10);
- Delineation of submerged aquatic vegetation (e.g., eelgrass beds).

**U.S. Army Corps of Engineers  
Programmatic General Permit (PGP)  
Appendix B  
Corps Secondary Impacts Checklist  
(for inland wetland/waterway fill projects in New Hampshire)**

1. Attach any explanations to this checklist. Lack of information could delay a Corps permit determination.
2. All references to “work” include all work associated with the project construction and operation. Work includes filling, clearing, flooding, draining, excavation, dozing, stumping, etc.
3. See PGP, GC 5 regarding single and complete projects.
4. Contact the Corps at (978) 318-8832 with any questions.

<b>1. Impaired Waters</b>	Yes	No
1.1 Will any work occur upstream within 1 mile upstream in the watershed of an impaired water? See <a href="http://www.des.state.nh.us/wmb/Section401/">www.des.state.nh.us/wmb/Section401/</a> to determine if there is an impaired water in the vicinity of your work area.*		
<b>2. Wetlands</b>		
2.1 Are there are streams, brooks, rivers, ponds, or lakes within 200’ of any proposed work?		
2.2 Are there proposed impacts to SAS, shellfish beds, special wetlands and vernal pools (see PGP, GC 26)? Applicants may obtain information from the NH Department of Resources and Economic Development Natural Heritage Bureau (NHB) website, <a href="http://www.dred.state.nh.us/divisions/forestandlands/bureaus/naturalheritage">www.dred.state.nh.us/divisions/forestandlands/bureaus/naturalheritage</a> , specifically the book <a href="#">Natural Community Systems of New Hampshire</a> .		
2.3 If wetland crossings are proposed, they are not adequately designed to maintain hydrology, sediment transport & wildlife passage.		
2.4 Would the project remove part or all of a riparian buffer? (Riparian buffers are lands adjacent to streams where vegetation is strongly influenced by the presence of water. They are often thin lines of vegetation containing native grasses, flowers, shrubs and/or trees that line the stream banks. They are also called vegetated buffer zones.)		
2.5 The overall project site is more than 40 acres.		
2.6 What is the size of the existing impervious surface area?		
2.7 What is the size of the proposed impervious surface area?		
2.8 What is the % of the impervious area (new and existing) to the overall project site?		
<b>3. Wildlife</b>	Yes	No
3.1 Has the NHB determined that there are known occurrences of rare species, exemplary natural communities, Federal and State threatened and endangered species and habitat, in the vicinity of the proposed project? (All projects require a NHB determination.)		
3.2 Would work occur in an area identified by NH Fish and Game Department as “Highest Ranked Habitat by Ecological Condition in NH” (magenta areas on maps) or “Highest Ranked Habitat by Ecological Condition in biological region” (green areas on maps)? <a href="http://www.wildlife.state.nh.us/Wildlife/Wildlife_Plan/highest_ranking_habitat.htm">www.wildlife.state.nh.us/Wildlife/Wildlife_Plan/highest_ranking_habitat.htm</a> . The map is currently available as a PDF for download that can be zoomed in on.*		
3.3 Would work occur in an area identified as a “Conservation Focus Area” (purple areas). <a href="http://www.wildlife.state.nh.us/Wildlife/Wildlife_Plan/conservation_focus.htm">www.wildlife.state.nh.us/Wildlife/Wildlife_Plan/conservation_focus.htm</a> ? The map is currently available as a PDF for download that can be zoomed in on.*		
3.4 Would the project impact more than 20 acres of an undeveloped land block (upland, wetland/waterway) on the entire project site and/or on an adjoining property(s)?		
3.5 Does the project propose more than a 10-lot residential subdivision, or a commercial or industrial development?		
3.6 If stream crossings are proposed, will they impede hydrology, sediment transport & wildlife passage. (Note: Stream crossings should be designed in accordance with the PGP, GC 21.)		



<b>4. <u>Flooding/Floodplain Values</u></b>	Yes	No
4.1 Is the proposed project within the 100-year floodplain of an adjacent river or stream?		
4.2 If 4.1 is yes, will compensatory flood storage be provided if the project results in a loss of flood storage?		

\*Although this checklist utilizes state information, its submittal to the Corps is a Federal requirement.

## APPENDIX C - EFH RIVERS FOR ATLANTIC SALMON (See General Condition 10)

### CONNECTICUT RIVER AND TRIBUTARIES

<b>Ashuelot River</b>	<b>Little Sugar River</b>	Clark Brook	Cow Brook
Sprague Brook	Smith Brook	<b>Ammonoosuc River</b>	Carpenters Brook
Liscomb Brook	Gully Brook	Burton Brook	<b>Johns River</b>
Ash Swamp Brook	<b>Sugar River</b>	Bendell Brook	<b>Isreal River</b>
The Gulf	Walker Brook	Hunt Mountain Brook	Roaring Brook
Hubbard Brook	Beaver Brook	Roaring Brook	Moore Brook
Governors Brook	<b>Bloods Brook</b>	Scarritt Brook	Ames Brook
Ox Brook	<b>Mascoma River</b>	Carter Brook	Potter Brook
Partridge Brook	Mink Brook	Bill Little Brook	<b>Upper Ammonoosuc River</b>
Mill Brook	Coleman Brook	Conmary Brook	Simms Stream
Great Brook	Slade Brook	Smarts Mill Brook	<b>Mohawk River</b>
Cobb Brook	Petes Brook	Roaring Brook	Beaver Brook
<b>Cold River</b>	Hewes Brook	Kimball Brook	Dyer Brook
Hackett Brook	Grant Brook	Lyman Brook	Arlin Brook
Benware Brook	Eastman Brook	Sweatt Brook	
Beaver Brook	Oliverian Brook	Cone Brook	

### MERRIMACK RIVER AND TRIBUTARIES

Second Brook	Bowman Brook	Brickyard Brook	Cate Brook
<b>Nashua River</b>	Baker Brook	Browns Brook	Giles Pond - Salmon Brook
Chase Brook	Ray Brook	<b>Suncook River</b>	Weeks Brook
Nesenkeag Brook	<b>Piscataquog River</b>	Bow Bog Brook	Bennett Brook
Horseshoe Pond -	<b>South Branch River</b>	Bow Brook	Knox Brook
Naticook Brook	Penacook Lake	<b>Soucook River</b>	Needle Shop Brook
<b>Souhegan River</b>	Hayward Brook	Bryant Brook	<b>Pemigewasset River</b>
Riddle Brook	<b>Contocook River</b>	Glines Brook	Turkey River
Sawmill Brook	Cold Brook	Stirrup Iron Brook	Bradleys Island
Watts Brook	Tannery Brook	Allen Brook	Horseshoe Island
Pointer Club Brook	Burnham Brook	Cross Brook	Woods Brook
Little Cohas Brook	Messer Brook	Punch Brook	
Cohas Brook	Millstone Brook	Shaw Brook	
Chandler Brook	Dalton Brook	<b>Winnepesaukee River</b>	

### ANDROSCOGGIN RIVER AND TRIBUTARIES

Conner Brook	Kidder Brook	Bean Brook	Bear Brook
Austin Mill Brook	Pea Brook	Horne Brook	Moose Pond
Gates Brook	Stony Brook	Stearns Brook	Munn Pond
Clement Brook	Moose Brook	Leavitt Stream	Smoky Camp Brook
East Brook	Perkins Brook	Chickwolnepy Stream	Mollidgewock Brook
Peabody Brook	<b>Moose River</b>	Island Brook	Clear Stream
Leadmine Brook	Tinker Brook	Goose Pond	Umbagog Lake
<b>Rattle River</b>	Cascade Alpine Brook	Sessions Brook	
Josh Brook	<b>Dead River</b>	Bog Brook	

### SACO RIVER AND TRIBUTARIES

<b>Swift River</b>	<b>E.Branch Saco River</b>	Albany Brook	Kendron Brook
Mason Brook	<b>Ellis River</b>	Sawyer River	Willey Brook
Artist Brook	Rocky Branch	Nancy Brook	Flume Cascade
Kearsage Brook	Mountain Brook	Sleeper Brook	<b>Ossipee River</b>
Lucy Brook	Meadow Brook	Davis Brook	<b>Beech River</b>
Conway Lake	Barlett Brook	Benis Brook	<b>Bearcamp River</b>
Echo Lake	Razor Brook	Avalanche Brook	

### COCHECO RIVER

### LAMPREY RIVER

**Note: Rivers and Tributaries that are bolded are specifically included as rivers that are contained in various State and Federal anadromous fish restoration programs and should be the primary focus for Atlantic salmon protections.**

