Application No.: NAE-2004-2594
Applicant: General Public in the Commonwealth of Massachusetts

Effective Date: January 20, 2005
Expiration Date: January 20, 2010

DEPARTMENT OF THE ARMY
PROGRAMMATIC GENERAL PERMIT
COMMONWEALTH OF MASSACHUSETTS

The New England District of the U.S. Army Corps of Engineers (Corps) hereby issues a Programmatic General Permit (PGP) that expedites review of minimal impact work in coastal and inland waters and wetlands within the Commonwealth of Massachusetts.

I. GENERAL CRITERIA:

Activities with minimal impacts, as specified by the terms and conditions of this PGP and on the attached Appendix A, Definition of Categories, are either:

Category 1: Non-reporting. Eligible without screening (provided the authorizations are obtained which this permit states are necessary for activities to be eligible for authorization under this non-reporting category), or

Category 2: Reporting. Require screening and a written determination of eligibility under the general permit by the Corps after coordination with the U.S. Fish and Wildlife Service, U.S. Environmental Protection Agency and National Marine Fisheries Service, and the Massachusetts Coastal Zone Management (CZM) Office.

This PGP does not affect the Corps Individual Permit review process or activities exempt from Corps jurisdiction.

II. ACTIVITIES COVERED:

Work and structures that are located in, or that affect, navigable waters of the United States (regulated by the Corps under Section 10 of the Rivers and Harbors Act of 1899); the discharge of dredged or fill material into waters of the United States (regulated by the Corps under Section 404 of the Clean Water Act); and the transportation of dredged material for the purpose of disposal in the ocean (regulated by the Corps under Section 103 of the Marine Protection, Research and Sanctuaries Act).

III. PROCEDURES

A. State and Local Approvals

For projects authorized pursuant to this PGP, when the following local or State approvals are also required, the permits must be obtained in order for this PGP authorization to be valid (applicants are responsible for ensuring that these required State licenses and approvals have been applied for and obtained):

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

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

(c) **Water Quality Certification** is required for work in Corps jurisdiction involving a discharge of dredged or fill materials to waters of the U.S. Some projects require an individual Water Quality Certification (WQC), under Section 401 of the Clean Water Act, issued by the Massachusetts DEP before work can proceed (see Page 6 for 401 WQC requirements).

(d) **Coastal Zone Management:** Any project that meets the terms and conditions of Category 1 of this PGP (i.e., non-reporting), has been determined to be consistent with the Massachusetts Coastal Zone Management (CZM) plan and does not require any additional CZM review. For work being screened under Category 2 of this PGP, the Corps will coordinate screening of any work in or affecting the coastal zone with the Office of Coastal Zone Management; for these projects the Corps will notify applicants if an individual CZM concurrence is required.

B. Corps Authorizations

CATEGORY 1 (Non-Reporting)

Eligibility

Activities in Massachusetts that:

- Are subject to Corps jurisdiction (see Condition 2, Page 9), and
- Meet the definition of Category 1 in Appendix A - Definition of Categories, and
- Meet the conditions of the PGP listed on Pages 9 - 17

may proceed without application or notification to the Corps provided the authorizations are obtained which this permit states are necessary for activities to be eligible for authorization under this non-reporting category).

Project proponents seeking Category 1 authorizations are not relieved of the obligation to comply with this PGP's general conditions (see Page 9) 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 outside experts such as the Massachusetts Historical Commission and the appropriate Indian tribes is recommended when there is a high likelihood of the presence of resources of concern.

Although Category 1 projects are non-reporting, the Corps reserves the right to require an Individual Permit review if there are concerns for the aquatic environment or any other factor of the public interest (see Condition 4 on Discretionary Authority, Page 9).

Work that is not subject to the Commonwealth's WPA, but is subject to Corps jurisdiction, is eligible for Corps authorization under this PGP. Although an Order of Conditions is not required if the work is not subject to the WPA, this PGP's review thresholds and requirements concerning WQC and CZM consistency apply. Such projects could include activities that are exempt from the WPA or activities in Federal wetlands that are not included in the WPA.

CATEGORY 2 (Reporting – Requiring Screening)

Eligibility Criteria

Activities in Massachusetts that are:

- Subject to Corps jurisdiction, and
- Meet the definition of Category 2 in Appendix A - Definition of Categories, and
- Meet the conditions of the PGP listed on Pages 9 - 17,

Require written approval from the Corps. These projects will be reviewed through interagency screening (see Federal Screening Procedures below) to determine whether such activities may be authorized under this PGP. To be eligible and subsequently authorized, an activity must result in minimal impacts to the aquatic environment as determined by the Corps based on comments from the review team and the criteria listed above. Mitigation may be required to compensate for unavoidable impacts to ensure net effects of a project are minimal.

For Category 2 projects, applicants must obtain not only a written authorization from the Corps, but an Order of Conditions and certifications or waivers concerning WQC and CZM, as stated on Page 1. Applicants shall apply directly to the appropriate local Conservation Commission and/or DEP regional office (see Page 18 for addresses) for local and State approvals.

Consultation with the Corps and outside experts is required to ensure compliance with all of this PGP's conditions, such as consultation with the Massachusetts Historical Commission and the appropriate Native American Indian tribes to ensure compliance with Condition 7. Also, note that the review thresholds under Category 2 apply to single and complete projects only (see Condition 5).

Application Procedures

Applicants must apply directly to the Corps for all Category 2 projects using ENG Form 4345. Alternatively, the Corps will accept DEP's WQC or Chapter 91 application forms for its review provided the forms were already sent to the DEP. Applicants must use a Corps application form for all projects involving work that is not subject to Commonwealth jurisdiction. Upon receipt of the application, the Corps will determine if it:

(1) requires additional information (see "information typically required" below);
(2) is appropriate for screening with the Federal resource agencies (see Category 2 Federal Screening Procedures below);
(3) is ineligible under the terms and/or conditions of this PGP; or
(4) will require Individual Permit review, regardless of whether the terms and conditions of this PGP are met, based on concerns for the aquatic environment or any other factor of the public interest (see Condition 4 on Discretionary Authority).

If open water disposal is proposed, the Corps will make a suitability determination, fully coordinated with the Federal resource agencies, before coordinating a project at a joint processing meeting.

All Category 2 applicants shall submit a copy of their Corps, WQC or Chapter 91 application materials, DEP's Notice of Intent, or the State's Environmental Notification Form (ENF), to the State Historic Preservation Officer at the Massachusetts Historical Commission (MHC), and the Wampanoag, Stockbridge-Munsee and/or Narragansett Tribal Historic Preservation Officers when applicable (see Page 19 for geographic areas of concern) to be reviewed for the presence of historic,

archaeological, or tribal resources in the permit area that the proposed work may affect. Submittals to the Corps shall include information to indicate that this has been done (a copy of the applicant's cover letter to MHC and tribes, the ENF distribution list, or a copy of MHC and tribal response letters when applicable).

Information Typically Required

The following information may not be necessary for all projects. Please see www.nae.usace.army.mil for a more comprehensive checklist. Select "Regulatory/Permitting," "Forms" and then "Application and Plan Guideline Checklist." Please check with our office for project-specific requirements.

(a) purpose of the project;
(b) 8½"x11" locus map. 8½"x11" plan views of the entire property and project limits with existing and proposed conditions;
(c) typical cross-section views of all wetland and waterway fill areas and wetland replication areas;
(d) legible, reproducible plans. On each plan show the NGVD 1929 equivalent for the project's vertical datum (MHW, MLW, MLLW or other tidal datum for tidal projects) with the vertical units. Do not use local datum;
(e) wetland delineation for site, Corps wetland delineation data sheets (see web site) and calculations of waterway and wetland impact areas (see Condition 2);
(f) delineation of submerged aquatic vegetation, e.g., eelgrass beds, in tidal waters;
(g) 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, below the ordinary high water in inland waters and below the high tide line in coastal waters;
(h) mean low water, mean high water and high tide elevations in navigable waters;
(i) limits of any Federal Navigation Project in the vicinity of the project area and State Plane Coordinates for the limits of the proposed work closest to the Federal Navigation Project;
(j) alternatives analysis submitted to the DEP for WQC review, and/or additional information compiled on alternatives;
(k) identify and describe potential impacts to essential fish habitat (see Condition 10);
(l) photographs of wetland/waterway to be impacted.

Information typically required for dredging projects:

(a) sediment testing, including physical (e.g., grain-size analysis), chemical and biological testing. For projects proposing open water disposal, applicants are encouraged to contact the Corps as early as possible regarding sampling and testing protocols. Sampling and testing of sediments without such contact should not occur and if done, would be at the applicant's risk.
(b) the area in square feet and volume of material to be dredged below mean high water;
(c) existing and proposed water depths;
(d) type of dredging equipment to be used;
(e) nature of material (e.g., silty sand);
(f) any existing sediment grain size and bulk sediment chemistry data for the proposed or any nearby projects;
(g) information on the location and nature of municipal or industrial discharges and occurrence of any contaminant spills in or near the project area, location of the disposal site (include locus sheet);
(h) shellfish survey;
(i) identify and describe potential impacts to essential fish habitat (see Condition 10);
(j) delineation of submerged aquatic vegetation (e.g., eelgrass beds).

Federal Screening Procedures

The Corps will review all complete applications for Category 2 projects at interagency screening meetings (or "joint processing" meetings) with the Federal resource agencies (U.S. Fish & Wildlife Service, U.S. Environmental Protection Agency and National Marine Fisheries Service) to determine whether such activities may be authorized under this PGP. The Federal resource agencies will comprise the interagency review team. The Massachusetts CZM also attends the meetings and the Corps will notify applicants if an individual CZM consistency concurrence is required. Other State agency representatives frequently attend the meetings as advisors and for informal consultation purposes. The meetings are held at the Corps every three weeks, or coordinated as necessary to provide applicants with a timely response. The Corps and Federal resource agencies, at the branch chief or equivalent level, may agree on certain activities that do not need to be coordinated at these meetings.

If the Corps and Federal resource agencies determine that the activity is eligible for the PGP, the Corps will send an authorization letter directly to the applicant and a copy to the DEP regional office. If the activity is not eligible under the PGP or if the Corps determines that additional information is required, the Corps will notify the applicant in writing and will send a copy of this notification to DEP.

For projects reviewed with the Federal agencies, the agencies may recommend within ten business days special conditions for projects to avoid or minimize adverse environmental effects and to ensure the terms and conditions of the PGP are met. The Corps will determine that a project is ineligible under this PGP and will begin its Individual Permit review procedures if any one of the Federal agencies, within ten business days of the screening meeting, expresses a concern within their area of expertise, states the resource or species that could be impacted by the project, and describes the impacts that, either individually or cumulatively, will be more than minimal.

This 10-day notice may be spoken and is not required to be fully documented, but must be confirmed with a written response within an additional ten working days from the date of the spoken comment. 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 spoken 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. The Corps may reinstate a project's eligibility under the PGP provided the Federal agencies' concerns are satisfied. The Federal resource agencies may request additional information within their area of expertise within ten business days of the screening 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.

Coastal Zone Management Screening Procedures

Category 2 projects that involve work in or affecting the coastal zone will be screened with CZM at the joint processing meeting or electronically if a CZM representative is not at the joint processing meeting. The CZM will make a determination, at joint processing or within 10 business days of receipt, that (1) CZM consistency may be waived; (2) CZM consistency may be waived provided CZM and the Corps agree to special conditions to protect the land or water uses or natural resources of the coastal zone; or (3) an individual CZM consistency concurrence will be required for the

project. If CZM requires an individual CZM consistency concurrence, the Corps may issue a conditional letter, which will notify the applicant that the Federal authorization is not valid until CZM consistency concurrence is issued or waived by the Office of Coastal Zone Management.

Minerals Management Service (MMS) Review

Projects with construction of solid fill structures or discharge of fill that may extend beyond the coastline or the baseline from which the territorial sea is measured (i.e., mean low water), must be coordinated with MMS, Outer Continental Shelf (OCS) Survey Group, pursuant to the Submerged Lands Act (43 USC. Section 13011315, 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 is in receipt of the project information to determine if the baseline will be affected. No notification within the fifteen-day review period will constitute a "no effect" determination. Otherwise, the solicitor's notification to the Corps may be spoken but must be followed with a written confirmation within ten business days from the date of the spoken notification. This procedure will be eliminated if the Commonwealth of Massachusetts provides a written waiver of interest in any increase in submerged lands caused by a change in the baseline resulting from solid fill structures or fills authorized under this PGP.

401 Water Quality Certification

For work in Corps jurisdiction involving a discharge to waters of the U.S., an Individual 401 Water Quality Certification (WQC) must be obtained from or waived by the Massachusetts DEP before work can proceed as authorized by this PGP for the following circumstances (pursuant to MGL c. 21 Sections 26 - 53 and regulations at 314 CMR 9.00). The following activities are excerpted from the Massachusetts DEP regulations at 314 CMR 9.04: Activities Requiring an Application, and require an Individual 401 Water Quality Certification application:

(1) *More than 5000 SF.* Any activity in an area subject to 310 CMR 10.00 which is also subject to 33 USC 1251, et seq. and will result in the loss of more than 5000 SF cumulatively of bordering and isolated vegetated wetlands and land under water.

(2) *Outstanding Resource Waters.* Any activity resulting in any discharge of dredged or fill material to any Outstanding Resource Water. See 314 CMR 4.00 Massachusetts Surface Water Quality Standards at: http://www.state.ma.us/dep/bwp/iww/files/314cmr4.htm.

(3) *Real Estate Subdivision* - Any discharge of dredged or fill material associated with the creation of a real estate subdivision, unless there is a recorded deed restriction providing notice to subsequent purchasers limiting the amount of fill for the single and complete project to less than 5000 square feet cumulatively of bordering and isolated vegetated wetlands and land under water and the discharge is not to an Outstanding Resource Water. Real estate subdivisions include divisions where approval is required and where approval is not required under the Subdivision Control Law, MGL. c. 41, §81K through 81GG. Discharges of dredged or fill material to create the real estate subdivision include but are not limited to the construction of roads, drainage, sidewalks, sewer systems, buildings, septic systems, wells, and accessory structures.

(4) *Activities Exempt under MGL. c. 131, §40.* Any activity not subject to MGL. c. 131, §40, which is subject to 33 USC 1251, et seq. and will result in any discharge of dredged or fill material to bordering vegetated wetlands or land under water.

(5) *Routine Maintenance.* Routine maintenance of existing channels, such as mosquito control projects or road drainage maintenance, that will result in the annual loss of more than 5000 square feet cumulatively of bordering and isolated vegetated wetland and land under water will be evaluated under the criteria of 314 CMR 9.06. A single application may be submitted and a single certification may be issued for repeated routine maintenance activities on an annual or multi-year basis not to exceed five years.

(6) *More than 5000 sq. ft. of Isolated Vegetated Wetlands.* Any activity in an area not subject to jurisdiction of MGL. c. 131, §40 that is subject to 33 U.S.C.1251, et seq. (i.e., isolated vegetated wetlands) which will result in the loss of more than 5000 square feet cumulatively of bordering and isolated vegetated wetlands and land under water.

(7) *Rare and Endangered Species Habitat in Isolated Vegetated Wetlands.* Any activity resulting in the discharge of dredged or fill material to an isolated vegetated wetland that has been identified as habitat for rare and endangered species.

(8) *Salt Marsh.* Any activity resulting in the discharge of dredged or fill material in any salt marsh.

(9) *Individual 404 Permit.* Any activity that is subject to an Individual Permit under Section 404 of the Clean Water Act by the Corps of Engineers.

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

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

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

Emergency Situations Procedures

Emergency situations are limited to sudden, unexpected occurrences that could potentially result in an unacceptable hazard to life, a significant loss of property, or an immediate, unforeseen, and significant economic hardship if corrective action requiring a permit is not undertaken within a time period less than the normal time needed to process an application under standard procedures. If an emergency situation requires action in less than 30 days after the occurrence, it qualifies for the amended notification procedures described below.

Notification Procedures for Emergency Situations:

Any project proponent may request emergency authorization from the Corps, however the Corps will determine if a project qualifies for these emergency situation procedures. The Federal resource agencies, the Massachusetts Historical Commission and the tribes will each designate an emergency contact and an alternate in the event the regular contact is unavailable. When an application for Category 2 work is received that the Corps determines is an "emergency" as defined above, the Corps will fax a copy of the plans and Determination of Eligibility to the agency representatives and their alternates. The resource agencies would then have sixteen business hours to notify the Corps if they have any comments on authorization of the project under the PGP. Objections to the Corps determination of an "emergency" situation will not be accepted. If no response is received within sixteen business hours, the Corps will proceed with a decision on the application. If the resource agencies have comments on the proposal, they will have sixteen business hours to put their comments in writing. If written comments from the Federal agencies are not received within sixteen business hours, the Corps will proceed with a decision on the application.

If a Federal agency requests that an Individual Permit be required for a project or requests modifications to the project based on concerns within their area(s) of expertise, the Corps will notify the applicant within one business day of receipt of that request that the project as proposed does not qualify for authorization under this PGP and the emergency Individual Permit procedures may be followed. In any event, the Corps will notify the applicant within sixteen business hours of commencement of the screening process as to whether the project may proceed under this PGP.

Notification Procedures for FEMA and MEMA Declared Emergency Situations.

The Massachusetts DEP, Massachusetts Emergency Management Agency (MEMA), or the Federal Emergency Management Agency (FEMA) will notify the Corps within 24 hours of the occurrence of a disaster and advise the Corps of the nature of the occurrence and any known remedial and/or protective measures. The Corps will notify the emergency contact of the Federal resource agencies, the Massachusetts Historical Commission and the tribes that a disaster has occurred within one business day of being notified by the MA DEP, MEMA or FEMA. The Corps will work with FEMA, MEMA and the emergency contacts under the "Notification Procedures for Emergency Situations" section above to expedite authorization under this PGP.

IV. CORPS AUTHORIZATIONS: INDIVIDUAL PERMIT

Work that is defined in the Individual Permit category of Appendix A - Definition of Categories, or that does not meet the terms and conditions of this PGP, will require an application for an Individual Permit from the Corps (see 33 CFR Part 325.1). The screening procedures outlined for Category 2 projects will only serve to delay project review in such cases. The applicant shall submit the appropriate application materials (including the Corps application form) at the earliest possible date. General information and application forms can be obtained at our web site or by calling us (see Pages 18 and 19). Individual WQC and CZM consistency concurrence are required when applicable from the Commonwealth of Massachusetts before Corps permit issuance.

V. PROGRAMMATIC GENERAL PERMIT CONDITIONS:

The following conditions apply to activities authorized under this PGP, including all Category 1 (non-reporting) and Category 2 (reporting – requiring screening) activities:

General Requirements

1. Other Permits: Authorization under this PGP does not obviate the need to obtain other Federal, state, or local authorizations required by law.

2. Federal Jurisdictional Boundaries. Applicability of this PGP 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 of Engineers concerning "waters of the United States" and "navigable waters of the United States." Wetland boundaries shall be delineated in accordance with the January 1987 Corps of Engineers Wetlands Delineation Manual, located at http://www.saj.usace.army.mil/permit/ documents /87manual.pdf. The U.S. Fish and Wildlife Service publishes the National List of Plant Species that Occur in Wetlands, located at http://www.nwi.fws.gov. The Natural Resources Conservation Service (NRCS) publishes the current hydric soil definition, criteria and lists, located at http://www.statlab.iastate.edu/soils/hydric.

3. Minimal Effects. Projects authorized by this PGP shall have no more than minimal individual and cumulative adverse environmental impacts as determined by the Corps.

4. Discretionary Authority. Notwithstanding compliance with the terms and conditions of this permit, the Corps retains discretionary authority to require an Individual Permit review 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 consequences of the proposal warrant Individual Permit review based on the concerns stated above. This authority may be invoked for projects with cumulative environmental impacts that are more than minimal or if there is a special resource or concern associated with a particular project that is not already covered by the remaining conditions of the PGP that warrants greater review.

Whenever the Corps notifies an applicant that an Individual Permit may be required, authorization under this PGP is voided and no work may be conducted until the Corps Individual Permit is obtained 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 shall be treated together as constituting one single and complete project and/or all planned phases of a multi-phased project, unless the Corps determines that a component has independent utility. (The *Independent Utility* test is used to determine what constitutes a single and complete project in the Corps regulatory program. A project is considered to have independent utility if it would be constructed absent the construction of other projects in the project area. Portions of a multi-phase project that depend upon other phases of the project do not have independent utility. Phases of a project that would be constructed even if the other phases were not built can be considered as separate single and complete projects with 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 United States (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 be reviewed for Category 1 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 Category 2 activity, then the entire linear project shall be reviewed as one project under Category 2. 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.

6. Permit On-Site. For Category 2 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.

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 Massachusetts Historic Preservation Officer, the National Register of Historic Places, and the Wampanoag, Stockbridge-Munsee, and Narragansett Tribal Historic Preservation Officers. See Page 19 for historic properties contacts and geographic areas of concern for each. Project proponents shall apply to the Corps for all projects that would otherwise qualify for Category 1 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 Department of the Army jurisdiction that might be eligible for listing in the National Register of Historic Places, he/she shall immediately notify the District Engineer.

8. National Lands. Activities authorized by this PGP shall not impinge upon the value of any National Wildlife Refuge, National Forest, National Marine Sanctuary (e.g., Stellwagen Bank) or any area administered by the National Park Service (e.g., Cape Cod National Seashore).

9. Endangered Species. No activity authorized under this PGP may affect a threatened or endangered species or a species proposed for such designation, as identified under the Federal Endangered Species Act (ESA), or which is likely to destroy or adversely modify the critical habitat of such species, or which would result in a "take" of any threatened or endangered species of fish or wildlife, or which would result in any other violation of Section 9 of the ESA protecting threatened or endangered species of plants. Applicants shall notify the Corps if any listed species or critical habitat is in the vicinity of the project and shall not begin work until notified by the District Engineer (DE) that the requirements of the ESA have been satisfied and that the activity is authorized. Information on the location of threatened and endangered species and their critical habitat can be obtained from the U.S. Fish and Wildlife Service and National Marine Fisheries Service (NMFS) (addresses listed on Page 18).

10. Essential Fish Habitat. As part of the PGP screening process, the Corps will coordinate with NMFS in accordance with the 1996 amendments to the Magnuson-Stevens Fishery and Conservation Management Act to protect and conserve the habitat of marine, estuarine and anadromous finfish, mollusks, and crustaceans. This habitat is termed "Essential Fish Habitat" (EFH), and is broadly defined to include "those waters and substrate necessary to fish for spawning, breeding, feeding, or growth to maturity." Applicants may be required to describe and identify potential impacts to EFH. Any work, except for exploratory drilling and borings for bridges, in streams in the Connecticut and Merrimack River watersheds that are stocked with Atlantic salmon (see attached lists) shall not be authorized under Category 1 of the MAPGP and must be screened for potential impacts to EFH. Conservation recommendations made by NMFS will normally be included as a permit requirement by the Corps. For additional information see the EFH list on Page 20 and the EFH regulations at 50 CFR Part 600 (http://www.nmfs.noaa.gov). Additional information on the location of EFH can be obtained from NMFS. The NMFS contact information is provided on Page 18.

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

National Wild and Scenic Rivers System segments for Massachusetts as of December 2004, include: **Sudbury/Assabet/Concord Rivers** as follows: the Sudbury from the Danforth Street bridge in Framingham downstream to the confluence with the Assabet, the Assabet from 1,000 feet below the Damon Mill Dam downstream to the confluence with the Sudbury, and the Concord from the confluence of the Sudbury and Assabet downstream to the Route 3 bridge in Billerica; and **Westfield River** as follows: Shaker Mill Brook from Brooker Hill Road in Becket to its headwaters. The Upper East Branch from the Windsor/Cummington town line to its confluence; Upper East Branch

Tributaries including Drowned Land Brook, Center Brook and Windsor Jambs Brook. Headwater tributaries of the West Branch, including Shaker Mill Brook from Brooker Hill Road in Becket to its confluence with the West Branch; Depot Brook; Savery Brook; Watson Brook; and Center Pond Brook from Center Pond to its confluence with the West Branch. The Lower Middle Branch, East Branch, and Main Stem in the Town of Huntington (3.2 miles) and the Upper East Branch from its confluence with Sykes Brook to its confluence with the West Branch. The Taunton River from the confluence of the Town River and Matfield River in Bridgewater downstream to Mt. Hope Bay in Fall River is under congressionally authorized study as a potential addition to the Wild and Scenic Rivers System.

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

13. Federal Liability. In issuing this permit, the Federal Government does not assume any liability for the following: (a) damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes; (b) damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the United States in the public interest; (c) damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit; (d) design or construction deficiencies associated with the permitted work; (e) damage claims associated with any future modification, suspension, or revocation of this permit.

14. 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 United States 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 of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.

<u>Minimization of Environmental Impacts</u>:

15. Minimization. Discharges of dredged or fill material into waters of the United States, including wetlands, shall be avoided and minimized to the maximum extent practicable. Permittees may only fill those jurisdictional wetlands that the Corps authorizes to be filled and impact those wetlands 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 Clean Water Act.

16. Heavy Equipment in Wetlands. Heavy equipment other than fixed equipment (drill rigs, fixed cranes, etc.) working within 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 or timber mats that are adequate to support the equipment in such a way as to minimize disturbance of wetland soil and vegetation. (See Condition 17 below.) 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. An adequate supply of spill containment equipment shall be maintained on site.

Note: "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, and they include large timbers bolted or cabled together (timber mats). 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.

17. Temporary Fill. No temporary fill (e.g., access roads, cofferdams) shall be placed in waters of the U.S. (including wetlands) unless specifically authorized in writing by the Corps. If temporary fill is authorized, it shall be stabilized and maintained during construction in such a way as to prevent its eroding into portions of waters of the U.S. where it is not authorized. Swamp or timber mats (see 16 above) are considered as temporary fill when they are removed immediately upon work completion. The area must be restored in accordance with Condition 18.

- Unconfined temporary fill authorized for discharge into flowing water (rivers and streams) shall consist only of clean washed 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 Condition 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.
- No temporary work shall drain a water of the U.S. by providing a conduit for water on or below the surface.

18. Restoration.

- Upon completion of construction, all disturbed wetland areas (the disturbance of these areas must be authorized) shall be stabilized with a wetland seed mix containing only plant species native to New England.
- The <u>introduction</u> or <u>spread</u> of invasive plant species in disturbed areas shall be controlled.
- 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. Coastal 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. For example, 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 (supersedes the Shore Protection Manual), located at http://chl.erdc.usace.army.mil. Select "Products/ Services" and then "Publications." Part 5, Chapter 7-8, a(2)c is particularly relevant.

20. Sedimentation and Erosion Control. Adequate sedimentation and erosion control management measures, practices and devices, such as phased construction, vegetated filter strips, geotextile silt fences, hay bales or other devices, shall be installed and properly maintained to reduce erosion and retain sediment on-site during and after construction. They shall be capable of preventing erosion, of collecting sediment, suspended, and floating materials, and of filtering fine sediment. These devices shall be removed upon completion of work and the disturbed areas shall be stabilized. The sediment collected by these devices shall be removed and placed at an upland location, in a manner that will prevent its later erosion into a waterway or wetland. All exposed soil and other fills shall be permanently stabilized at the earliest practicable date.

21. Waterway Crossings. (a) All temporary and permanent crossings of waterbodies shall be suitably culverted, bridged, or otherwise designed to withstand and to prevent the restriction of high flows, and so as not to obstruct the movement of aquatic life indigenous to the waterbody beyond the actual duration of construction.
(b) New permanent crossings shall conform with the General Standards contained in the August 6, 2004 "Massachusetts River and Stream Crossing Standards: Technical Guidelines", provided at www.nae.usace.army.mil. Go to "Regulatory/Permitting", and then "Other". The Corps must authorize any non-conformance with the guidelines in writing.
(c) For new permanent crossings, open bottom arches, bridge spans or embedded culverts are generally preferred over traditional culverts and are required for Category 1/non-reporting projects. However, site constraints (e.g., placing footings) may make use of an open bottom arch or bridge span impractical, and in these cases well-designed culverts may actually perform better. Project proponents shall consult with the Corps under the Category 2 or IP review process if an open bottom arch or bridge span is impractical.
(d) No projects involving open trench excavation in flowing waters are allowed in Category 1. However, open trench excavation projects may qualify for Category 1 provided they utilize management techniques such as temporary flume pipes, culverts, cofferdams, etc. and maintain normal flows within the stream boundary's confines (see Appendix A, Endnote 2) so the work does not occur in flowing waters. Projects utilizing these management techniques must meet the other Category 1 requirements (see Appendix A, Page 1) and all of this PGP's terms and conditions. If not, they will require review under the Category 2 screening procedures. Projects proposing no management techniques to avoid open trench excavation will require an Individual Permit.
(e) Temporary bridges, culverts, or cofferdams shall be used for equipment access across streams (note: areas of fill and/or cofferdams must be included in total waterway/wetlands impacts to determine applicability of this PGP).

(f) For projects that otherwise meet the terms of Category 1, in-stream construction work shall be conducted during the low flow period, July 1 to October 1 in any year. Projects that are not to be conducted during that time period are ineligible for Category 1 and shall be screened pursuant to Category 2, regardless of the waterway and wetland fill and/or impact area.

22. Discharge of Pollutants. All activities involving any discharge of pollutants into waters of the U.S. authorized under this PGP shall be consistent with the Massachusetts DEP's Stormwater Management Policy (as described in "Stormwater Management, Volume One: Stormwater Policy Handbook," March 1997, or subsequent versions), applicable water quality standards, effluent limitations, standards of performance, prohibitions, and pretreatment standards and management practices established pursuant to the Clean Water Act (33 USC 1251), and other applicable State and local laws. If applicable water quality standards, limitations, etc. are revised or modified during the term of this PGP, the authorized work shall be modified to conform with these standards within six months of the effective date of such revision or modification, or within a longer period of time deemed reasonable by the District Engineer in consultation with the Regional Administrator of the EPA. Applicants may presume that State water quality standards are met with issuance of the WQC.

23. Spawning Areas. Discharges of dredged or fill material, and/or suspended sediment producing activities, in fish and shellfish spawning or nursery areas during spawning seasons shall be avoided. During all times of year, impacts to these areas shall be avoided or minimized to the maximum extent practicable.

24. Storage of Seasonal Structures. Coastal structures, such as pier sections and floats, that are removed from the waterway for a portion of the year (often referred to as seasonal structures) shall be stored in an upland location, located above mean high water (MHW) and not in tidal wetlands. These seasonal structures may be stored on the fixed, pile-supported portion of the structure that is seaward of MHW. 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 carry out the construction or operation of the work authorized herein in a manner so as to maintain as much as practicable, and to minimize any adverse impacts on, existing fish, wildlife, and natural environmental functions and values.

<u>Procedural Conditions</u>:

26. Inspections. The permittee shall allow the District Engineer or his authorized representative(s) to make periodic inspections at any time deemed necessary in order to ensure that the work is being performed in accordance with the terms and conditions of this permit. The District Engineer may also require post-construction engineering drawings for completed work or post-dredging survey drawings for any dredging work.

27. Maintenance. The permittee shall maintain the activity authorized by this PGP in good condition and in conformance with the terms and conditions of this permit. This does not include maintenance of dredging projects. Maintenance dredging is subject to the review thresholds in Appendix A: Definition of Categories sheets (attached) and/or any conditions included in a written Corps authorization. Maintenance dredging includes only those areas and depths previously authorized and dredged. Some maintenance activities may not be subject to regulation under Section

404 in accordance with 33 CFR 323.4(a)(2). Information on mosquito ditching and maintenance is provided at www.nae.usace.army.mil. Go to "Regulatory/Permitting," and then "Other."

28. Property Rights. This permit does not convey any property rights, either in real estate or material, or any exclusive privileges, nor does it authorize any injury to property or invasion of rights or any infringement of Federal, State, or local laws or regulations.

29. Modification, Suspension, and Revocation. This permit may be either modified, suspended, or revoked in whole or in part pursuant to the policies and procedures of 33 CFR 325.7. Any such action shall not be the basis for any claim for damages against the United States.

30. Restoration. The permittee, upon receipt of a notice of revocation of authorization under this permit, shall restore the wetland or waterway to its former conditions, without expense to the United States and as directed by the Secretary of the Army or his authorized representative. If the permittee fails to comply with such a directive, the Secretary or his designee may restore the wetland or waterway to its former condition, by contract or otherwise, and recover the cost from the permittee.

31. Special Conditions. The Corps may independently, or at the request of the Federal resource agencies, impose other special conditions on a project authorized pursuant to this PGP that are determined necessary to minimize adverse environmental effects or based on any other factor of the public interest. Failure to comply with all conditions of the authorization, including special conditions, will constitute a permit violation and may subject the permittee to criminal, civil or administrative penalties, or restoration.

32. False or Incomplete Information. If the Corps makes a determination regarding the eligibility of a project under this permit and subsequently discovers that it has relied on false, incomplete, or inaccurate information provided by the permittee, then the permit shall not be valid and the Government may institute appropriate legal proceedings.

33. 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 must restore the area to the satisfaction of the District Engineer.

34. Enforcement cases. This PGP does not apply to any existing or proposed activity in Corps jurisdiction associated with an on-going Corps or Environmental Protection Agency enforcement action, until such time as the enforcement action is resolved or the Corps and/or EPA determines that the activity may proceed independently without compromising the enforcement action.

Duration of Authorization/Grandfathering:

35. Duration of Authorization. This PGP expires five years from the effective date listed at the top of Page 1. Activities authorized under Category 1 of this PGP that have commenced (i.e., are under construction) or are under contract to commence in reliance upon this PGP's authorization will remain authorized provided the activity is completed within twelve months of this PGP's expiration date. Activities authorized under Category 2 of this PGP will remain authorized in accordance with the project-specific date that the Corps provides to the permittee in the PGP authorization letter, unless:
(a) the PGP is either modified or revoked, or
(b) 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).

The permittee must be able to document to the Corps satisfaction that the project was under construction or contract by the appropriate date. Activities completed under the Category 1 or Category 2 authorizations of this PGP will continue to be authorized by this PGP after its expiration date. Activities authorized under Category 2 of 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.

36. Previously Authorized Activities.
(a) Activities completed under the authorizations of past PGP's that were in effect at the time the activity was completed will continue to be authorized by those PGP's.
(b) Projects that have received written verification or approval from the Corps, based on applications made to the Corps prior to issuance of this PGP or the previous nationwide permits, regional general permits, or letters of permission shall remain authorized as specified in each authorization.
(c) Activities authorized pursuant to 33 CFR Part 330.3 ("Activities occurring before certain dates") are not affected by this PGP.

VI. CONTACTS FOR PROGRAMMATIC GENERAL PERMIT:

1. FEDERAL

U.S. Army Corps of Engineers
Regulatory Division
696 Virginia Road
Concord, Massachusetts 01742-2751
(978) 318-8335, (800) 362-4367 (MA)
(800) 343-4789 (ME, VT, NH, RI, CT)

Federal Endangered Species and Essential Fish Habitat:
National Marine Fisheries Service
One Blackburn Drive
Gloucester, Massachusetts 01930
(978) 281-9300

Wild and Scenic Rivers:
National Park Service
15 State Street
Boston, Massachusetts 02109
(617) 223-5191

Federal Endangered Species:
U.S. Fish and Wildlife Service
70 Commercial Street, Suite 300
Concord, New Hampshire 03301
(603) 223-2541

Bridge Permits
Commander (obr)
First Coast Guard District
One South Street - Battery Bldg
New York, NY 10004
(212) 668-7021

2. STATE OF MASSACHUSETTS

Department of Environmental Protection (DEP):

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

DEP Regional Offices:

DEP-Western Regions
Wetlands Protection Program
436 Dwight Street
Springfield, Massachusetts 01103
(413) 784-1100

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

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

DEP-Northeast Region
Wetlands Protection Program
One Winter Street, 5th Floor
Boston, Massachusetts 02108
(617) 292-5500

Massachusetts Office of Coastal Zone Management (CZM)
Coastal Zone Management
251 Causeway Street, Suite 900
Boston, Massachusetts 02114
(617) 626-1200

Massachusetts Division of Marine Fisheries
Massachusetts Division of Marine Fisheries
SE Marine Fisheries Station
50A Portside Drive
Pocasset, Massachusetts 02559
(508) 563-1779

3. HISTORIC PROPERTIES:

Massachusetts Historical Commission
The Massachusetts Archives Bldg.
220 Morrissey Boulevard
Boston, Massachusetts 02125
(617) 727-8470
(617) 727-5128 (fax)
Area of concern: All of Massachusetts

Wampanoag Tribal Historic
Preservation Officer
20 Black Brook Road
Aquinnah, MA 02535
(508) 645-9265
(508) 645-3233 (fax)
Area of concern: All of Massachusetts

Narragansett Tribal Historic
Preservation Officer
P.O. Box 700
Wyoming, Rhode Island 02898
(401) 539-1190
(401) 742-5048 (cell)
(401) 539-4217 (fax)
Area of concern: All of Massachusetts

Tribal Historic Preservation Officer
c/o Stockbridge-Munsee Community
P.O. Box 70
Bowler, Wisconsin 54416
(715) 793-3970
Area of concern: West of Connecticut River

4. ORGANIZATIONAL WEBSITES:

Army Corps of Engineers	www.nae.usace.army.mil (click "Regulatory/Permitting")
Corps of Engineers Headquarters	www.usace.army.mil (click "Services for the Public")
Environmental Protection Agency	http://www.epa.gov/owow/wetlands/
National Marine Fisheries Service	www.nmfs.noaa.gov
U.S. Fish and Wildlife Service	www.fws.gov
National Park Service	www.nps.gov/rivers/index.html
MA Executive Office of Env. Affairs	www.state.ma.us/envir
MA Dept.of Environmental Protection	www.state.ma.us/dep (access the four regional offices)
MA DEP, Division of Wetlands	www.state.ma.us/dep/brp/ww/rpwwhome.htm
MA DEP, Division of Waterways	www.state.ma.us/dep/brp/waterway/waterway.htm
MA Division of Marine Fisheries	www.state.ma.us/dfwele/dmf/
MA Div. of Fisheries & Wildlife	www.state.ma.us/dfwele/dfw/dfw_toc.htm
MA Endangered Species Program	www.state.ma.us/dfwele/dfw/nhesp/heritage.htm
MA Coastal Zone Management	www.state.ma.us/czm
MassGIS	www.state.ma.us/mgis/massgis.htm
MA Historical Commission	www.state.ma.us/sec/mhc
Wampanoag Tribe	www.wampanoagtribe.net
Narragansett Tribe	www.narragansetttribe.com
Stockbridge-Munsee Tribe	www.mohican.com

VII. ESSENTIAL FISH HABITAT (EFH)

Any fill in the following Waters of the U.S. in the specified towns must be reviewed under Category 2 of the MAPGP for potential impacts to EFH for Atlantic salmon. The following streams are stocked with Atlantic salmon (*Salmo salar).* Please note that the mainstems of the Connecticut and Merrimack Rivers are Navigable waters of the U.S. and any fill in them must be reviewed under Category 2. Any questions on locations should be directed to the Corps.

Connecticut River Watershed

Agawam:	Westfield River
Ashfield:	Bear River, South River to Baptist Corner Road
Athol:	Millers River
Becket:	Depot Brook, Shaker Mill Brook, Walker Brook to Spark Brook, West Branch Westfield River, Yokum Brook to Rudd Pond Brook
Bernardston:	Fall River
Blandford:	Wigwam Brook
Buckland:	Deerfield River
Charlemont:	Chickley River, Cold River, Deerfield to Pelham Brook, North River, Pelham Brook
Chester:	Middle Branch Westfield River, Walker Brook, West Branch Westfield River
Chesterfield:	Child's Brook West Branch, Dead Branch, Tower Brook, Westfield River
Colrain:	North River, East Branch North River, West Branch North River, Green River
Conway:	Bear River, Deerfield River, Poland Brook, South River
Cummington:	Bartlett Brook, Child's Brook West Branch, Meadow Brook, North Branch Swift River to Stage Road, Swift River, Westfield Brook, Westfield River
Deerfield:	Deerfield River
Easthampton:	Manhan River to North Branch Manhan River, North Branch Manhan River
Erving:	Millers River
Florida:	Cold River
Gill:	Fall River
Goshen:	Swift River
Greenfield:	Allen Brook, Deerfield River, Fall River, Green River
Hatfield:	Mill River to West Brook, West Brook
Hawley:	Chickley River to King Brook, Mill Brook to Gorge Hill Road
Huntington:	Dead Branch to Westfield River, Little River, Middle Branch Westfield River Pond Brook to Searle Road, Roaring Brook to Mica Mill Road, West Branch Westfield River, Westfield River
Leverett:	Sawmill River
Leyden:	Green River
Middlefield:	Factory Brook, Middle Branch Westfield River to Tuttle Brook, West Branch Westfield River
Montaque:	Millers River, Sawmill River
Montgomery:	Westfield River, Roaring Brook
Northampton:	North Branch Manhan River
Orange:	Millers River
Plainfield:	Bartlett Brook to Prospect Street, Meadow Brook to Gloyd Street
Rome:	Pelham Brook to Rice Brook
Royalston:	Millers River to Birch Hill Dam
Russell:	Bradley Brook, Potash Brook, Stage Brook, Westfield River

Savoy: Cold River to Black Brook, Westfield River to Griffin Hill Road
Shelburne: Allen Brook, Deerfield River, North River
Shutesbury: Sawmill River
Southampton: North Branch Manhan River
Southwick: Munn Brook
Washington: Depot Brook to Frost Road
Wendell: Millers River
Westfield: Little River to Munn Brook, Moose Meadow Brook to Mass Turnpike, Munn Brook, Westfield River
Westhampton: Dead Branch, North Branch Manhan River to Northwest Road
West Springfield: Westfield River
Whately: West Brook to Haydenville Road
Windsor: Westfield Brook to East Windsor Road, Westfield River
Worthington: Bronson Brook, Child's Brook West Branch, Little River to Goss Hill Road, Middle Branch Westfield River to Tuttle Brook

Merrimack River Watershed
Pepperell: Nissitissit River to Nashua River, Nashua River from Nissitissit River to New Hampshire border

VIII. AQUACULTURE GUIDELINES

NOTE: The following guidelines are excerpted from the Corps Aquaculture Letter of Permission dated September 1, 1991, with some modern clarifications.

Shellfish Aquacultural Facilities are used for bottom and/or suspended culturing and harvesting of bivalve mollusks in the inter-tidal and immediate sub-tidal area of navigable waters. Activities covered include: deployment and maintenance of buoys, rafts, trays, lines, and other equipment associated with the activity; discharge of minor quantities of fill material (i.e. as mineral growth medium) and work, including seed placement, transplanting, temporary wet storage, and harvesting. Activity must be found to have minimal impacts on navigation and the environment and must meet the following specific criteria:

A. The area authorized for this activity shall not exceed 10 acres, except where the permittee is a duly authorized municipality, for which the maximum size shall be 25 acres.

B. The area and any elevated structures within it are marked in conformance with 33 CFR 64, and the permittee has contacted the U.S. Coast Guard, *First District,* Aids to Navigation Branch (617) 223-3293, to coordinate the proper buoy markings for the activity. Buoys shall be deployed and maintained as appropriate.

C. No structure or device (except for marking buoys and as noted in D below) shall protrude more than 18" above the substrate.

D. Rafts and other floating equipment may be allowed to the extent that they cover no more than 10% of the project area, or 20,000 square feet, whichever is greater. An area shall be considered to be covered with floating equipment if normal navigation through the area is precluded. Projects which are in-place and authorized by the municipality (and State Division of Marine Fisheries if applicable*) by 1 September 1991* which have areas containing floating equipment exceeding the aforementioned limits may be authorized if they meet the remaining criteria. All rafts shall be securely anchored to the bottom, and all "lines" shall be attached to fixed mooring points at both ends.

E. Any fill material imported to the project from off site *(this is limited to mineral growth medium used in culture trays)* shall be clean and of comparable grain size to the native substrate.

F. No activity shall occur within a distance of 25 feet from beds of eelgrass, widgeongrass, or saltmarsh, nor shall such vegetation be damaged or removed.

G. An activity shall be deemed not applicable under this PGP if it can be shown that the activity, including any vehicular access, will have more than minimal negative impacts on avian resources such as, but not limited to: shore birds, wading birds, or members of the waterfowl group. This is meant to include migratory bird nesting, feeding or resting activities (see 50 CFR 10.13).

H. An activity shall be deemed not applicable under this PGP if it can be shown that the activity, including any vehicular access, will have more than minimal negative impacts on existing or naturally occurring beds or population of shellfish, marine worms or other invertebrates that could be used by humans, other mammals, birds, reptiles, or predatory fish.

I. No activity nor vehicular access to an activity shall occur in such a way as to negatively impact coastal or freshwater wetlands, or any endangered or threatened species on either the Federal or Massachusetts species list.

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

1/20/05

DISTRICT ENGINEER **DATE**

APPENDIX A: DEFINITION OF CATEGORIES

I. INLAND WATERS AND WETLANDS	**Inland Waters and Wetlands:** Waters that are regulated under Section 404 of the Clean Water Act, including rivers, streams, lakes, ponds and wetlands, and excluding Section 10 Navigable Waters of the U.S. 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[1] wetlands to tidal waters are reviewed in the Navigable Waters section. (See II. Navigable Waters on the next page.)		
	CATEGORY 1	**CATEGORY 2**	**INDIVIDUAL PERMIT**
(a) NEW FILL/ EXCAVATION DISCHARGES	<5,000 SF inland waterway and/or wetland fill and associated secondary impacts (e.g., areas drained, flooded, cleared or excavated). Fill area includes all temporary and permanent fill, and excavation discharges (except for incidental fallback). Swamp mats are considered as fill. (See General Condition 17.) Provided • In-stream work limited to July 1-October 1. • New permanent stream crossings shall consist of open bottom arches, bridge spans or embedded culverts. See General Condition 21. <u>This category excludes</u>: • dams, dikes, or activities involving water diversions.[2] • work in special inland waters &wetlands[4] and special aquatic sites[5] other than wetlands. • open trench excavation in flowing waters. See Condition 21. • work on Corps properties and Corps-controlled easements[3]. • work in streams in the Connecticut and Merrimack River watersheds stocked with Atlantic salmon (*Salmo salar*). (See Page 20.)	5,000 SF to <1 acre inland waterway and/or wetland fill and associated secondary impacts (e.g., areas drained, flooded, cleared or excavated). Fill area includes all temporary and permanent fill, and excavation discharges (except for incidental fallback). Swamp mats filling any area ≥5,000 SF are reviewed in Category 2. (See General Condition 17.) Projects with proactive restoration as a primary purpose with impacts of any area ≥5,000 SF. The Corps, in consultation with State and Federal agencies, must determine that net adverse effects are not more than minimal. Specific activities with impacts of any area ≥5,000 SF required to affect the containment, stabilization, or removal of hazardous or toxic waste materials that are performed, ordered, or sponsored by a government agency with established legal or regulatory authority. Wetlands must be restored in place.	≥1 acre inland waterway and/or wetland fill and secondary impacts (e.g., areas drained, flooded, cleared or excavated). Fill area includes all temporary and permanent fill, and excavation discharges (except for incidental fallback). EIS required by the Corps.

	CATEGORY 1	CATEGORY 2	INDIVIDUAL PERMIT
(b) BANK STABILIZATION PROJECTS	Inland bank stabilization <100 FT long and less than 1 CY of fill per linear foot below ordinary high water. * In-stream work limited to July 1-October 1. * No work in special inland waters & wetlands.[4] and special aquatic sites[5]. * No open trench excavation in flowing waters. See Condition 21. * No structures angled steeper than 3H:1V allowed. Only rough-faced stone or fiber roll revetments allowed. * No work on Corps properties and Corps-controlled easements[3]. * No work in streams in the Connecticut and Merrimack River watersheds that are stocked with Atlantic salmon (*Salmo salar*).	Inland bank stabilization ≥100 FT long and/or ≥1 CY of fill per linear foot, or any amount with fill in wetlands.	
(c) REPAIR AND MAINTENANCE OF AUTHORIZED FILLS.	Repair/maintenance of existing currently-serviceable, authorized fills with no expansion or change in use. *Conditions of the original authorization apply, however minor deviations in fill design allowed[11]	Replacement of non-serviceable fill, or repair/maintenance of serviceable fill, with expansion <1 acre, or with a change in use.	Replacement of non-serviceable fill, or repair/maintenance of serviceable fill, with expansion ≥1 acre.

II. NAVIGABLE WATERS	**Navigable Waters of the United States**: Waters that are subject to the ebb and flow of the tide and Federally designated navigable rivers (the Merrimack River, Connecticut River, and Charles River to the Watertown Dam in Massachusetts) (Section 10 Rivers and Harbors Act of 1899). The jurisdictional limits are the mean high water (MHW) line in tidal waters and the ordinary high water (OHW) mark in non-tidal portions of the Federally designated navigable rivers. 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[1] to tidal waters are also reviewed in this Navigable Waters section.		
	CATEGORY 1	**CATEGORY 2**	**INDIVIDUAL PERMIT**
(a) FILL	Fills authorized by Ch.91 Amnesty program (e.g., seawalls or bulkheads). No provisions for new or previously unauthorized fills in Category 1, other than those authorized under the MA Chapter 91 Amnesty program. Discharges of dredged or fill material incidental to the construction of bridges across navigable waters of the United States, including cofferdams, abutments, foundation seals, piers, and temporary construction and access fills provided the U.S. Coast Guard authorizes such discharges as part of the bridge permit. Causeways and approach fills are not included in this category and require Category 2 or Individual Permit authorization.	<1 acre fill and/or secondary waterway impacts (e.g., areas drained or flooded). Fill includes temporary and permanent waterway fill. Temporary fill and excavation <1 acre in special aquatic sites (SAS)[5]. No permanent fill and/or excavation in SAS[5] except when associated with a project with proactive restoration as a primary purpose with any amount of impact. The Corps, in consultation with Federal & state agencies, must determine that net adverse effects are not more than minimal. Specific activities with impacts of any area required to affect the containment, stabilization, or removal of hazardous or toxic waste materials that are performed, ordered, or sponsored by a government agency with established legal or regulatory authority. Wetlands must be restored in place.	≥1 acre waterway fill and/or secondary waterways or wetland impacts (e.g., areas drained or flooded). Fill includes temporary and permanent waterway fill. Temporary fill and excavation ≥1 acre in special aquatic sites[5]. Permanent fill or excavation, any amount, in special aquatic sites[5], other than as specified in Cat. 2. EIS required by the Corps.
(b) REPAIR AND MAINTENANCE WORK	Repair/maintenance of existing, currently serviceable, authorized structures and fills and Amnesty-approved fills, with no expansion or change in use. * Must be rebuilt in same footprint, however minor deviations in structure design allowed[11]	Replacement of non-serviceable structures and fills or repair/ maintenance of serviceable structures or fills, with fill replacement or expansion <1 acre.	Replacement of non-serviceable structures and fills or repair/maintenance of serviceable structure or fill, with replacement or expansion ≥1 acre.

	CATEGORY 1	CATEGORY 2	INDIVIDUAL PERMIT
(c) DREDGING AND ASSOCIATED DISPOSAL	Maintenance dredging for navigational purposes <1,000 CY with upland disposal. Includes return water from upland contained disposal area. Provided: • Proper siltation controls are used. • Dredging & disposal operation limited to November 1-January 15. • No impacts to special aquatic sites[5]. • No dredging in intertidal areas. • No dredging in Areas of Critical Environmental Concern (ACEC's). The MA Secretary of Environmental Affairs designates ACEC's and lists them at http://www.mass.gov/dem/programs/acec/.	Maintenance dredging ≥1,000 CY, new dredging ≤25,000 CY, or projects not meeting Category 1. Provided: • No impacts to special aquatic sites[5]. • Disposal includes: 1.upland; 2.beach nourishment of any area provided dredging's primary purpose is navigation or sand is from an upland source and Corps, in consultation w/Federal and State agencies, determines the net adverse effects are not more than minimal; and 3.open water & confined aquatic disposal, if Corps, in consultation with Federal and State agencies, finds the material suitable. • Includes return water from upland contained disposal areas.	Maintenance dredging and/or disposal (any amount) in or affecting a special aquatic site[6], new dredging ≥25,000 CY, or any amount in or affecting a special aquatic site[5].
(d) MOORINGS	Private non-commercial, non-rental single-boat moorings authorized by the local harbormaster. Provided: • Not associated with any boating facility[6]. • Not located within the horizontal limits[7] of a Federal Navigation Project other than a Federal Anchorage. Moorings in Federal Anchorage not associated with a boating facility[6]. • Not located in vegetated shallows[8].	Moorings associated with a boating facility[6]. Moorings that don't meet the terms in Category 1 and don't require an Individual Permit. Moorings located such that they, and/or vessels docked or moored at them, are within the buffer zone of the horizontal limits[7] of a Corps Federal Channel. (See Appendix B.) The buffer zone is equal to three times the authorized depth of that channel.	Moorings within the horizontal limits[7], or with moored vessels that extend within the horizontal limits, of a Federal Navigation Project (See Appendix B), except those in Federal Anchorages authorized under Cat. 1. Note: Federal Navigation Projects include both Federal Channels and Federal Anchorages. Any work in the area of the Cape Cod Canal[10] located west of the vertical lift railroad bridge as noted in Appendix C and specified at Endnote 10.

	CATEGORY 1	CATEGORY 2	INDIVIDUAL PERMIT
(e) PILE-SUPPORTED STRUCTURES AND FLOATS	Piers /structures licensed by Ch. 91 through the Amnesty program. Private, bottom-anchored floats ≤ 400 SF in size. Private, pile-supported structures for navigational access to the waterway, ≤ 400 SF in size, with attached floats totaling ≤ 200 SF. Provided (for all of the above): • Floats supported at least 2.5' above the substrate during all tides. • Pile-supported structures & floats are not positioned over vegetated shallows[8] and moored vessels are not positioned over special aquatic sites[5]. • Pile-supported structures are ≤ 4' wide and have at least a 1:1 height:width ratio[9]. • Ch. 91 license issued. • Not associated with a boating facility[6]. • Not located within the horizontal limits[7] of a Corps Federal Navigation Project (See Appendix B) • No structure extends across >25% of the waterway width at mean low water. • No structure located within 25' of any vegetated shallows[8].	Private piers and floats that don't meet the terms in Cat. 1, and don't require an Individual Permit. Pile-supported structures or floats located such that they, and/or vessels docked or moored at them, are within the buffer zone of the horizontal limits[7] of a Corps Federal Navigation Project (FNP). (See Appendix B.) The buffer zone is equal to three times the authorized depth of that FNP. Note: Federal Navigation Projects include both Federal Channels and Federal Anchorages. Expansions to existing boating facilities[6].	Pile-supported structures and floats associated with a new or previously unauthorized boating facility[6]. Pile-supported structures or floats located such that they and/or vessels docked or moored at them, are within the horizontal limits[7] of a Corps Federal Navigation Project (See Appendix B). Note: Federal Navigation Projects include both Federal Channels and Federal Anchorages. Any work in the area of the Cape Cod Canal[10] located west of the vertical lift railroad bridge as noted in Appendix C and specified at Endnote 10.
(f) MISCELLANEOUS	Temporary buoys, markers, floats, and similar structures for recreational use during specific events, provided they are removed with 30 days after use is discontinued. The placement of aids to navigation and regulatory markers which are approved by and installed in accordance with the requirements of the U.S. Coast Guard. (See 33 CFR part 66, Chapter I, subchapter C)." Oil spill clean-up temporary structures & fill. (continued on next page)	Structures or work in or affecting tidal or navigable waters that are not defined under any of the previous headings listed above. Includes, but is not limited to, utility lines, aerial transmission lines, pipelines, outfalls, boat ramps, bridges, tunnels and horizontal directional drilling activities seaward of the MHW line Shellfish aquaculture facilities in compliance with the Aquaculture Guidelines. (See Page 21.)	EIS required by the Corps. Shellfish aquaculture facilities not in compliance with guidelines, including those facilities within 25 feet of eelgrass beds. (See Page 21.)

	CATEGORY 1	CATEGORY 2	INDIVIDUAL PERMIT
(f) MISCELLANEOUS	(continued from previous page) Fish and wildlife harvesting structures and fill (as defined by 33 CFR 330, APP. A-4). Scientific measurement devices and survey activities such as exploratory drilling, surveying, and sampling activities. Does not include oil and gas exploration and fill for roads or construction pads.		

Endnotes/Definitions

[1] **Bordering and Contiguous Wetlands:** A bordering wetland is immediately next to its adjacent waterbody and may lie at, or below, the ordinary highwater 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 highwater 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".

[2] **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.

[3] **Corps Properties & Easements:** Contact the Corps, Real Estate Division (978) 318-8580 to initiate reviews about both Corps holdings and permit requirements.

[4] **Special Inland Waters and Wetlands:** Vernal pools – confined basin depressions with water for two or more continuous months in the spring and/or summer, for which evidence of one of more of the following obligate 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. (See MA NHESP " Guidelines for Certification of Vernal Pools" for further clarification.)

[5] **Special Aquatic Sites:** Includes wetlands and saltmarsh, mudflats, riffles and pools, and vegetated shallows.

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

[7] **Horizontal Limits:** The outer edge of a Federal Navigation Project (FNP). Contact the Corps of Engineers for information on FNP's.

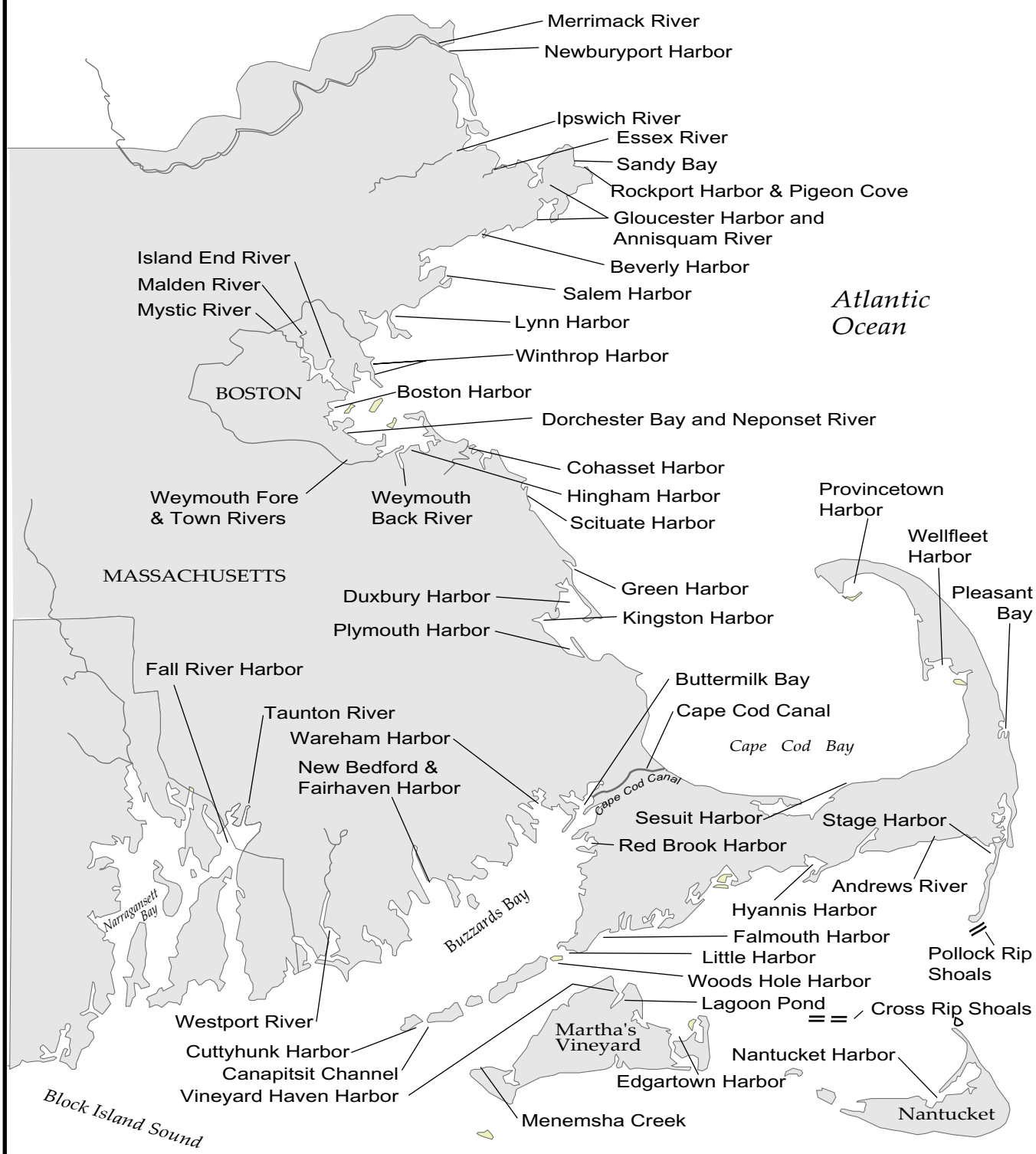
[8] **Vegetated Shallows:** Subtidal areas that support rooted aquatic vegetation such as eelgrass

[9] **Structures:** 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.

[10] **Cape Cod Canal:** The Individual Permit area begins approximately 1,000 feet West of the Cape Cod Canal vertical lift railroad bridge and continues westerly approximately 3,000 feet along the center line of the channel to the end of the area (NOAA Reference Chart 13236).

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

Federal Navigation Projects in Massachusetts

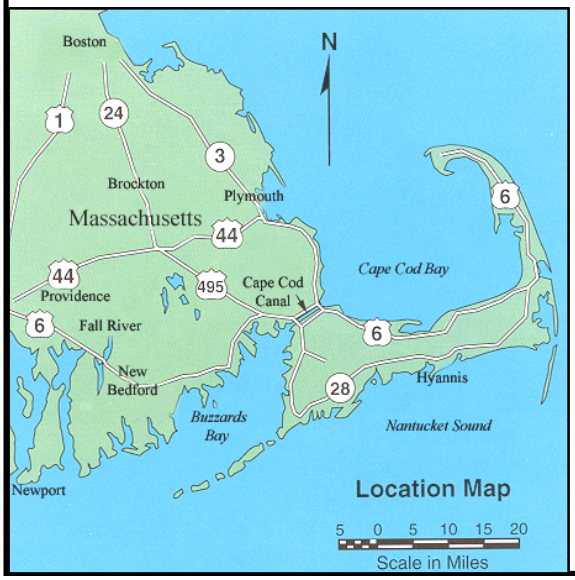


Cape Cod Canal
Vertical Lift Railroad Bridge

N

Station 390+00

Station 420+00



[11] Cape Cod Canal: The Individual Permit area begins approximately 1,000 feet West of the Cape Cod Canal Vertical Lift Railroad Bridge and continues westerly approximately 3,000 feet along the center line of the channel to the end of the area (NOAA Reference Chart 13236).

US Army Corps of Engineers ®
New England District

Map printed on January 30, 2003

Cape Cod Canal Individual Permit Area

LEGEND

Channel Limits

Center Line

Area (approximate) requiring Individual Permits for pile supported structures and floats from Stations 390+00 to 420+00.