

7 Authorizations, Permits, and Approvals

7.1 Introduction

This chapter identifies the federal authorizations,¹ as well as the state approvals and permits,² that are required prior to implementation of proposed transportation improvements through the Cape Cod Bridges Program (Program).

The federal authorizations and state approvals and permits applicable to the Build Alternative are identified in [Section 7.2](#) and [Section 7.3](#), respectively. The Massachusetts Department of Transportation will apply for and obtain federal and state permits required to implement the Build Alternative.

7.2 Federal Environmental Regulations and Authorizations

[Table 7-1](#) lists the federal authorizations that will be required prior to Program construction. The status of all authorizations, including the applicable issuing agencies, is also provided. As a designated “major project” under 23 United States Code (USC) 139(a)(7), the Program is being reviewed under the One Federal Decision (OFD) framework enacted through Section 11301 of the Infrastructure, Investments, and Jobs Act. The OFD specifies a two-year period for completion of an Environmental Impact Statement (EIS) as measured from the publication of a Notice of Intent (NOI) to the issuance of the Record of Decision (ROD), [and it also allows the lead agency to lengthen the schedule for good cause](#). The OFD also specifies completing all federal authorizations necessary to construct a major project no later than 90 days after the date of issuance of a ROD.

7.3 State Permits and Approvals

[Table 7-2](#) lists the state permits and approvals that will be required prior to Program construction. The status of all state permits and approvals, including the applicable issuing agencies, is also provided.

¹ Any license, permit, approval, finding, determination, or other administrative decision issued by an agency that is required or authorized under Federal law to implement a proposed action.

² Any permit, license, certificate, variance, approval, or other entitlement for use, granted by an Agency for or by reason of a Project.

Table 7-1. Federal Authorizations

Regulation	Regulatory Summary	Issuing Agency	Required Authorization	Status
National Environmental Policy Act (NEPA) (42 United States Code [USC] 4321 et seq)	NEPA requires federal agencies to assess the environmental and related social and economic effects of proposed major federal actions, prior to making decisions. Federal agencies must prepare an Environmental Impact Statement (EIS) if a proposed major federal action is determined to significantly affect the quality of the natural and human environment. ^[1]	Federal Highway Administration (FHWA) - NEPA Lead Agency	Issuance of Record of Decision (ROD) or Combined Final EIS /ROD pursuant to 23 USC 139.	Complete – Final EIS/ROD issued
Section 309 of the Clean Air Act (CAA) (42 USC 7609)	Section 309 of the CAA directs the Administrator of the U.S. Environmental Protection Agency (EPA) to review and comment publicly on the environmental impacts of federal activities, including actions for which agencies prepare an EIS.	EPA	Issue public comments on the Draft EIS and Final EIS.	Complete

Regulation	Regulatory Summary	Issuing Agency	Required Authorization	Status
Section 4(f), U.S. Department of Transportation (USDOT) Act (49 USC 303)	Section 4(f) prohibits USDOT agencies from using land from significant publicly owned parks, recreation areas, wildlife and waterfowl refuges or public and private historical sites unless there is no prudent or feasible alternative to that use and the action includes all possible planning to minimize harm, or the impact is <i>de minimis</i>. <u>For projects that involve the use of a Section 4(f) property where a <i>de minimis</i> impact determination cannot be made, either an individual Section 4(f) evaluation is prepared, or a programmatic Section 4(f) evaluation is used.</u>	FHWA	Section 4(f) Evaluation and Finding for use of Section 4(f) land.	<u>Complete – refer to Chapter 5, Final Section 4(f) Evaluation</u>
Section 106 of the National Historic Preservation Act (NHPA) [54 USC 306108]	Section 106 of the NHPA requires federal agencies to consider the effects of their undertakings on historic properties, which are defined as districts, archaeological sites, and individual buildings, structures, or objects that are listed or are eligible for listing in the National Register of Historic Places.	<u>FHWA, USACE, Massachusetts State Historic Preservation Officer, MassDOT</u>	<u>Programmatic Agreement</u>	<u>Complete – refer to Section 4.16, Cultural Resources</u>

Regulation	Regulatory Summary	Issuing Agency	Required Authorization	Status
Section 7 of the Endangered Species Act (ESA) [16 USC 1531 et seq]	Section 7 of the ESA requires federal agencies to ensure that their actions are not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitats.	- U.S. Fish and Wildlife Service (USFWS) - National Oceanic and Atmospheric Administration National Marine Fisheries Service (NOAA Fisheries)	Findings and verification	NOAA Fisheries and USFWS consultation complete; refer to Section 4.11, Threatened, Endangered, and Protected Species and Habitats ; Appendix 4.11, Attachments 1 and 2
Fish and Wildlife Coordination Act (FWCA) [16 USC 2901-2911]	The FWCA requires federal agencies to consult with USFWS, NOAA Fisheries, and the appropriate state wildlife agency before undertaking or permitting any activities that modify or control waters in the United States	- USFWS - NOAA Fisheries	Concurrence and verification	Consultation complete; refer to Section 4.11, Threatened, Endangered, and Protected Species and Habitats ; Appendix 4.11, Attachments 1 and 3
Coastal Zone Management Act (CZMA) [16 USC 1451 et seq]	The CZMA contains a "federal consistency provision," that requires federal agency activities that have reasonably foreseeable effects on state coastal zones to be consistent to the maximum extent practicable with the enforceable policies of a coastal state's federally approved coastal management program.	Massachusetts Office of Coastal Zone Management	Federal consistency review	Scheduled for completion by fall 2026

Regulation	Regulatory Summary	Issuing Agency	Required Authorization	Status
Magnuson-Stevens Fishery Conservation and Management Act (MSA) [16 USC 1801 et seq]	Section 305(b)(2) of the MSA requires federal agencies to consult with NOAA Fisheries when activities they authorize, fund, or undertake, or propose to authorize, fund, or undertake, may adversely affect Essential Fish Habitat (EFH).	NOAA Fisheries	Concurrence and verification	Consultation complete; refer to Section 4.11, Threatened, Endangered, and Protected Species and Habitats; Appendix 4.11, Attachment 3
Section 14 of the Rivers and Harbors Act of 1899 (33 USC 408) [Section 408]	Section 14 of the Rivers and Harbors Act of 1899 provides that the Secretary of the Army may, upon the recommendation of the Chief of Engineers, grant permission to other entities for the permanent or temporary alteration or use of any U.S. Army Corps of Engineers (USACE) Civil Works project. This requires a determination by the Secretary that the requested alteration will not be injurious to the public interest and will not impair the usefulness of the USACE project.	USACE	Section 408 permission	Scheduled for completion by summer 2026
General Bridge Act of 1946 (33 USC 525)	The General Bridge Act of 1946 requires the approval of the U.S. Coast Guard or the construction, maintenance, and operation of bridges and approaches over navigable Waters of the US (WOTUS).	U.S. Coast Guard	U.S. Coast Guard Bridge Permit for construction and operation of replacement bridges	Scheduled for completion by fall 2026

Regulation	Regulatory Summary	Issuing Agency	Required Authorization	Status
Section 402 of the CWA [33 USC 1342]	Section 402 of the CWA requires that all construction sites on an acre or greater of land, as well as municipal, industrial and commercial facilities discharging wastewater or stormwater directly from a point source (a pipe, ditch or channel) into a surface water of the United States (a lake, river, and/or ocean) must obtain permission under the National Pollutant Discharge Elimination System permit.	EPA	National Pollutant Discharge Elimination System – Construction General Permit	Scheduled for completion before the start of construction
Section 404 of the Clean Water Act (CWA) (33 USC 1344)	Section 404 of the CWA authorizes USACE to issue permits for the discharge of dredged or fill material into all WOTUS, including wetlands.	USACE	Section 404 Individual Permit	Scheduled for completion by fall 2026
Title 14 of the Code of Federal Regulations (14 CFR) Part 77, Safe, Efficient Use, and Preservation of the Navigable Airspace; 49 USC 44718	14 CFR Part 77 was adopted to establish notice standards for proposed construction or alteration that may result in an obstruction or an interference with air navigation facilities and equipment or the navigable airspace.	Federal Aviation Administration	Determination of No Hazard to Air Navigation	Notice of Proposed Construction or Alteration , scheduled for completion before the start of construction

^[1] In accordance with 23 Code of Federal Regulations Part 771.119(i), the Federal Highway Administration (FHWA) determined that the Cape Cod Bridges Program is an “action that is likely to have a significant impact on the environment.” FHWA issued the National Environmental Policy Act Class of Action determination for an Environmental Impact Statement on August 11, 2023.

Note: Section 401 of the CWA (33 USC 1341) is a federal requirement; however, in Massachusetts it is administered by the Massachusetts Department of Environmental Protection (MassDEP) through its implementing regulations at 314 CMR 9.00. The status of the Program’s 401 Water Quality Certificate (WQC) is included in **Table 7-2**.

Table 7-2. State Permits and Approvals

Regulation	Regulatory Summary	Issuing Agency	Required Authorization	Status
Massachusetts Environmental Policy Act (MEPA) (301 Code of Massachusetts Regulations [CMR] 11.00)	MEPA establishes review thresholds that identify categories of projects, or aspects thereof, of a nature, size or location that are likely, directly or indirectly, to cause damage to the environment. A review threshold that is met or exceeded specifies whether MEPA review shall consist of an Environmental Notification Form (ENF) and a mandatory Environmental Impact Report (EIR) or of an ENF and other MEPA review if the Secretary so requires. ^[1]	Massachusetts Executive Office of Energy and Environmental Affairs (MA EEA)	Secretary Certificate on Final Environmental Impact Report	Complete – Secretary’s Certificate issued spring 2026
Article 97 of the Amendments to the Massachusetts Constitution (Article 97) and the Public Lands Preservation Act (PLPA) [Ch. 274 of the Acts of 2022, codified at M.G.L. c. 3, § 5A]	Article 97 and the PLPA prohibit the change in use or disposal of public lands protected under Article 97 without legislative approval and a publicly disclosed alternatives analysis. It requires replacement land of equal or greater value or monetary compensation at 110% of the appraised value to be used within three years for land acquisition. Waivers may be granted under limited conditions by MA EEA.	MA EEA	Article 97 Land Disposition - requiring 2/3 roll call vote of both houses of the Legislature	Pending
Massachusetts Wetlands Protection Act (MA WPA) [310 CMR 10.00]	The MA WPA prohibits any filling, excavation, or other alteration of the land surface, water levels, or vegetation in wetlands, floodplains, riverfront areas, or other wetland resource areas, regardless of ownership, without a permit from the local Conservation Commission.	Bourne Conservation Commission	Order of Conditions	Scheduled for completion by summer 2026

Regulation	Regulatory Summary	Issuing Agency	Required Authorization	Status
401 Water Quality Certification (401 WQC) Regulations (314 CMR 9.00)	The 401 WQC Regulations require that any applicant seeking a federal permit or license for an activity that could result in a discharge of fill or dredge material into waters of the United States must obtain a state water quality certification, ensuring the proposed activity complies with state water quality standards before the federal permit can be issued.	Massachusetts Department of Environmental Protection (MassDEP)	- Major Fill/Excavation Project Certification - Major Dredge Project Certification	Scheduled for completion by fall 2026
Massachusetts Endangered Species Act (MESA) Regulations (321 CMR 10.00)	MESA protects rare species and their habitats by prohibiting the “Take” (i.e., harming, harassing, killing, or disrupting) of any plant or animal species listed as Endangered, Threatened, or Special Concern by the Massachusetts Division of Fisheries & Wildlife. Projects resulting in a “Take” of state-listed species must either be revised to avoid such impacts or will require a Conservation and Management Permit before moving forward.	Massachusetts Department of Fish and Wildlife: Division of Fisheries and Wildlife (MassWildlife) – Natural Heritage Endangered Species Program	Conservation and Management Permit	Scheduled for completion by summer 2026

^[1] The Secretary of the Massachusetts Executive Office of Energy and Environmental Affairs’ Certificate on the Environmental Notification Form issued on July 7, 2023 (File No. 16695) determined that the Cape Cod Bridges Program requires submission of a mandatory Environmental Impact Report.