

Bill as Introduced

CHAPTER 114
HB 621-FN-LOCAL - FINAL VERSION

17Mar2011... 0878h
4May2011... 1560EBA

2011 SESSION

11-0541
06/09

HOUSE BILL ***621-FN-LOCAL***

AN ACT relative to the authority of the department of transportation.

SPONSORS: Rep. Hill, Merr 6; Rep. Jennifer Coffey, Merr 6; Rep. Kreis, Merr 6; Rep. Chandler,
Carr 1; Rep. T. Keane, Merr 13; Rep. Foose, Merr 1; Sen. Bradley, Dist 3

COMMITTEE: Public Works and Highways

AMENDED ANALYSIS

This bill provides for an excavation and dredging permit by notification for municipalities that construct and maintain structures in accordance with Best Management Practices for Routine Roadway Maintenance.

This bill establishes a committee to study certain rules pertaining to stream crossings.

Explanation: Matter added to current law appears in ***bold italics***.
 Matter removed from current law appears [~~in brackets and struck through~~].
 Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

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HB 621-FN-LOCAL

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1 17Mar2011... 0878h
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STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Eleven

10
11 AN ACT relative to the authority of the department of transportation.

12 *Be it Enacted by the Senate and House of Representatives in General Court convened:*

13
14
15 114:1 Excavating and Dredging Permit; Certain Exemptions. Amend RSA 482-A:3, I-a to read
16 as follows:

17 I-a. *Notwithstanding any law or rule to the contrary*, in reviewing requests proposed,
18 sponsored, or administered by the department of transportation, there shall be a rebuttable
19 presumption that there is a public need for the requested project, and that the department of
20 transportation has exercised appropriate engineering judgment in the project's design.

21 114:2 New Paragraph; Municipalities; Permit by Notification. Amend RSA 482-A:3 by inserting
22 after paragraph XV the following new paragraph:

23 XVI.(a) Any person or political subdivision that repairs, replaces, or maintains structures in
24 accordance with the best management practices for routine roadway maintenance in
25 New Hampshire published by the department of transportation, including culverts up to 48 inches in
26 diameter or the functional hydraulic equivalent, and files an appropriate notice under subparagraph
27 (b), shall satisfy the permitting requirements of this section for minimum impact activities, as
28 defined by rules adopted by the commissioner.

29 (b) Appropriate notice to the department shall include a completed routine roadway
30 notification form as outlined in Env Wt 303.05 including, at a minimum, the following information:

31 (1) Name and mailing address of the applicant or authorized person.

32 (2) Name and mailing address of the applicant or authorized agent, if any,
33 representing the political subdivision.

34 (3) Telephone number, and email address and fax number if available.

35 (4) A copy of the appropriate United States Geological Survey topographic map at its
36 original scale on 8-1/2 x 11 sheets with the project locations clearly labeled.

37 (5) Town tax map, number, and lot number, if any, of the project sites.

38 (6) Project location including street name and address or distance from the nearest
39 intersection to the project.

40 (7) Information regarding the existing and proposed structure shown on plan sheets
41 or equivalent plans as shown in the best management practices for routine roadway manual and a

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1 listing of the best management practices to be used during construction.

2 (8) Color photographs depicting the proposed work sites showing existing structures,
3 surrounding land, and jurisdictional areas in and adjacent to the work location.

4 (9) A signed certification that information is accurate and correct and that work will
5 conform to the best management practices for routine roadway maintenance.

6 (c) Appropriate notice to the department under subparagraphs (a) and (b) shall be
7 mailed and received by department at least 5 days prior to the start of construction.

8 114:3 Committee Established. There is established a committee to study certain rules adopted
9 by the department of environmental services concerning stream crossings.

10 114:4 Membership and Compensation.

11 I. The members of the committee shall be as follows:

12 (a) Four members of the house of representatives, appointed by the speaker of the house
13 of representatives.

14 (b) Two members of the senate, appointed by the president of the senate.

15 II. Members of the committee shall receive mileage at the legislative rate when attending to
16 the duties of the committee.

17 114:5 Duties. The committee shall study whether certain rules adopted by the department of
18 environmental services concerning stream crossings:

19 I. Violate Article 28-a of the New Hampshire constitution.

20 II. Have statutory authority for their implementation.

21 114:6 Chairperson; Quorum. The members of the study committee shall elect a chairperson
22 from among the members. The first meeting of the committee shall be called by the first-named
23 house member. The first meeting of the committee shall be held within 45 days of the effective date
24 of this section. Four members of the committee shall constitute a quorum.

25 114:7 Report. The committee shall report its findings and any recommendations for proposed
26 legislation to the speaker of the house of representatives, the president of the senate, the house
27 clerk, the senate clerk, the governor, and the state library on or before November 1, 2011.

28 114:8 Effective Date. This act shall take effect upon its passage.

29
30 Approved: May 31, 2011

31 Effective Date: May 31, 20

HB 621 FISCAL NOTE

AN ACT relative to the authority of the department of transportation.

FISCAL IMPACT:

The Department of Environmental Services and the New Hampshire Municipal Association state this bill, as amended by the House (Amendment #2011-0878h), will decrease state restricted revenue and local expenditures by an indeterminable amount in FY 2012 and each fiscal year thereafter. The Department of Transportation states this bill will decrease state highway fund expenditures by an indeterminable amount in FY 2012 and each fiscal year thereafter. There will be no fiscal impact on county and local revenues, or county expenditures.

METHODOLOGY:

This bill provides for an excavation and dredging permit by notification for municipalities that construct and maintain structures in accordance with best management practices for routine roadway maintenance and establishes a committee to study certain rules adopted by the Department of Environmental Services concerning stream crossings. The Department of Environmental Services notes the proposed legislation increases the maximum size culvert eligible for a permit by notification from 36 inches currently dictated by administrative rules implemented in accordance with RSA 482A:11, VII to 48 inches. Accordingly, the Department states this bill will decrease state restricted revenues by the amount associated with the application and permit fees for municipal and state Department of Transportation projects involving culverts between 36 and 48 inches. The Department is unable to estimate the number of permits that will shift to the routine roadway notification process as a result of this change and is therefore unable to estimate the anticipated decrease in state restricted revenues. Inversely, the Department states the proposed legislation will decrease local expenditures by an indeterminable amount as application and permit fees for projects involving culverts between 36 and 48 inches will no longer apply.

The Department of Transportation states this bill will decrease state highway fund expenditures in proportion to the number of projects involving culverts between 36 and 48 inches that will no longer require application and permit fees. The Department is unable to anticipate the number of projects that may meet this criteria and is therefore unable to estimate to what extent the proposed legislation will decrease state highway fund expenditures in FY 2012 and each fiscal year thereafter.

The New Hampshire Municipal Association states this bill will decrease local expenditures by amounts associated with application and permit costs for municipal projects utilizing culverts between 36 and 48 inches. Additionally, the Association states the proposed legislation will reduce certain costs associated with the application process as more projects will qualify for the less costly permit by notification process.

Committee Minutes

**SENATE CALENDAR NOTICE
TRANSPORTATION**

- ✓ Senator Jim Rausch Chairman
- ✓ Senator David Boutin V Chairman
- ✓ Senator James Forsythe
- ✓ Senator Molly Kelly
- ✓ Senator Nancy Stiles

*Start: 10:17
End: 10:30*

For Use by Senate Clerk's Office ONLY	
<input type="checkbox"/> Bill Status	
<input type="checkbox"/> Docket	
<input type="checkbox"/> Calendar	
Proof <input type="checkbox"/> Calendar <input type="checkbox"/> Bill Status	

Date: March 30, 2011

HEARINGS

Thursday

4/7/2011

TRANSPORTATION

LOB 103

9:00 AM

(Name of Committee)

(Place)

(Time)

EXECUTIVE SESSION MAY FOLLOW

- | | | |
|------------|------------|---|
| 9:00 AM | HB548 | relative to boater safety education and relative to the minimum age for operation of motorized vessels. |
| 9:30 AM | HB549 | relative to driver's license reexaminations. |
| ✓ 10:00 AM | HB621-FN-L | relative to the authority of the department of transportation. |
| 10:30 AM | HB540-FN | relative to motor vehicle inspections. |

Sponsors:

HB548

Rep. D.L. Chris Christensen

Rep. John Hikel

Rep. David Russell

HB549

Rep. Robert Williams

Rep. Richard Hinch

Rep. Ted Rokas

HB621-FN-L

Rep. Gregory Hill

Rep. Jennifer Coffey

Rep. Kenneth Kreis

Rep. Gene Chandler

Sen. Jeb Bradley

Rep. Thomas Keane

Rep. Robert Foose

HB540-FN

Rep. Keith Murphy

Rep. Steve Vaillancourt

Rep. Phil Greazzo

Rep. Cameron DeJong

Rep. Paul Mirski

Sen. Raymond White

Danielle Barker 271-3091

Sen. Jim Rausch

Chairman

Transportation Committee

Hearing Report

TO: Members of the Senate

FROM: Danielle Barker, Legislative Aide

RE: Hearing report on HB 621-FN-L – **relative to the authority of the department of transportation.**

HEARING DATE: April 7, 2011

MEMBERS OF THE COMMITTEE PRESENT: Sen. Rausch, Sen. Kelly and Sen. Stiles

MEMBERS OF THE COMMITTEE ABSENT: Sen. Boutin and Sen. Forsythe

Sponsor(s): Rep. Hill, Merr 6; Rep. Jennifer Coffey, Merr 6; Rep. Kreis, Merr 6; Rep. Chandler, Carr 1; Rep. T. Keane, Merr 13; Rep. Foose, Merr 1; Sen. Bradley, Dist 3

What the bill does: This bill provides for an excavation and dredging permit by notification for municipalities that construct and maintain structures in accordance with Best Management Practices for Routine Roadway Maintenance.

This bill establishes a committee to study certain rules pertaining to stream crossings.

Who supports the bill: Rep. Hill, Rep. Chandler, Rep. Coffey, Collis Adams representing the New Hampshire Department of Environmental Services, William Cass representing the New Hampshire Department of Transportation, Gary Abbott representing Associated General Contractors, Michael Williams representing the New Hampshire Municipal Association and Susan Olsen

Who opposes the bill: No one

Summary of testimony received:

Senator Rausch opened the public hearing on House Bill 621 and recognized Representative Hill to introduce the bill.

Representative Hill, the prime sponsor, said his constituent town of Northfield asked him to review the law on culverts as they had received a cost shift in the amount of \$74,000. He said the House Public Works and Highways Committee amended the bill, which he is happy with. He thinks the rules in the Joint Legislative Committee on Administrative Rules (JLCAR) are wrong and are detrimental to the municipalities. He said after reading the testimony from the JLCAR hearing on this issue last year the New Hampshire Department of Environmental Services (DES) treated everyone as though they had a complete disregard for the environment. He stated that he thinks it is obviously that these rules were written with disregard for the costs to be borne by the town or individual. He said it is extremely arbitrary the way the Tier I, Tier II, Tier III system was created and did not come from the U.S. Army Corp. of Engineers. He further stated these rule changes prohibited private construction due to costs, added costs to the budget for the New Hampshire Department of Transportation (DOT) and added costs to the DES as they had to add personnel to enforce this rule.

Senator Rausch recognized William Cass to speak.

Mr. Cass is in support of the bill as amended by the House. He is from the DOT. They would be willing to work with the study committee.

Senator Rausch asked if the DOT objected to anything in the bill.

Mr. Cass said no.

Senator Rausch recognized Michael Williams to speak.

Mr. Williams is in support of the bill as amended by the House. He represents the New Hampshire Municipal Association.

Senator Rausch recognized Collis Adams to speak.

Mr. Adams is in support of the bill as amended by the House. He is from the DES. He told the Committee the State has a State Programmatic General Permit (SPGP) system, which allows applicants to get both their federal and State permit together and the original bill would have jeopardized this process.

Senator Rausch asked Mr. Adams if he supported the study committee.

Mr. Adams said DES would be happy to offer technical assistance to the study committee.

Senator Rausch recognized Susan Olsen to speak.

Ms. Olsen is in support of the bill. She handed out a packet to the Committee. She spoke about the SPGP.

With no one else wishing to speak Senator Rausch closed the public hearing.

Funding:

Fiscal Impact:

The Department of Environmental Services states this bill will have an indeterminable impact on state revenue and expenditures. The Department of Transportation states this bill may increase state highway fund expenditures by an indeterminable amount in FY 2012 and each year thereafter. The New Hampshire Municipal Association states this bill may decrease local expenditures by an indeterminable amount in FY 2012 and each year thereafter.

Methodology:

The Department of Environmental Services states this bill modifies an existing non-lapsing dedicated fund, the wetlands and shoreland review fund, by narrowing its purpose by no longer depositing wetland fees in the fund and having only fees associated with the shoreland review program deposited in the fund. The Department states the wetlands fees would still be collected and appropriated for the wetlands program, but any remaining funds would now lapse to the general fund at the end of each fiscal year. The Department states the revenue stream associated with the wetlands fees varies annually with economic conditions and seasonally with the construction cycle and it is usually greatest during the first and fourth quarters of the fiscal year with a drop-off in the second and third quarters. As a result, the Department cannot predict the fiscal impact of the bill.

The Department of Transportation (DOT) states this bill's requirement for a political subdivision to submit notifications to the Department and to the Department of Environmental Services whenever the political subdivision constructs, replaces, or maintains certain structures related to projects involving filling and dredging in wetlands. The Department states it has not received such notifications in the past and cannot predict how many it could expect to receive or any cost increase associated with it.

The New Hampshire Municipal Association states the bill provides for an excavation and dredging permit by notification for a municipality that constructs and maintains certain structures. The Association states replacing the current permitting requirement with this bill's notification requirement could reduce local expenditures by eliminating the permit fee and some of the costs associated with filling out the permit forms, however it

cannot estimate the number of projects that would be affected or the amount by which local expenditures could be reduced.

Action: The Committee took action on the bill on April 14, 2011. Senator Stiles moved Ought to Pass with a second from Senator Boutin. Senator Pausch called the vote and the Committee voted OTP 3-0.

DCB

[File: HB 06211.pdf]

Date: April 14, 2011

Speakers

Testimony

TESTIMONY OF SUSAN OLSEN
BEFORE THE
SENATE COMMITTEE ON TRANSPORTATION
7 April 2011

Good morning, Mr. Chairman. My name is Susan Olsen, I appear here this morning as a property owner and tax payer in support of Representative Gregory Hill's efforts to effect a review of the so-called stream crossings rules promulgated - and ultimately adopted - by the Water Division of the NH Department of Environmental Services.

The chair will recall last year's hearings held before the House Committee on Public Works in the middle of the rules' JLCAR journey and how those hearings highlighted the specious foundation upon which the rules were cobbled together and the huge and arbitrary financial impact they were having on the state's political subdivisions. No longer are municipal road agents or public works officials competent to manage culvert construction, maintenance, repair or replacements in their town roads. By virtue of the new rules, nothing less than a one-size-fits-all, 60 inch diameter open-bottom culvert and attendant geomorphic hydrology study will do.

DES will tell you that is nonsense, that road agents can replace less than 60 inch culverts in kind as long as they disturb absolutely nothing else in the process. And just to show how easy they are to get along with, before HB 621 left the House Committee on Public Works, DES graciously offered to allow road agents the ability to replace culverts up to 48 inches in diameter as long as the road agent notified DES at some point.

DES will tell you variously that their authority for these rules is found in the state's Programmatic General Permit between it and the US Army Corps of Engineers, a kind of five-year-long franchise agreement that allows DES to enforce certain aspects of the Clean Water Act of 1972 on behalf of the Corps, expiring next year.

DES might also tell you its authority is found in RSA 482 A:11, the administrative provisions chapter entitled "Fill and Dredge in Wetlands".

The Programmatic General Permit, or PGP, states in paragraph 21 of its list of general conditions that "stream crossings [shall] conform with the NH Stream Crossing Guidelines when the state has adopted these guidelines as regulations." One might reasonably ask "when did DES adopt the UNH Stream Crossing Guidelines as regulations"?

Was adoption directed by statute enacted by the General Court? No.

Was adoption mandated by the federal government? No.

Then where and how were they adopted?

The guidelines were adopted by reference in section 904.05 of the Stream Crossing Rules promulgated by DES.

Specifically,

Env-Wt 904.05 Design Criteria for Tier 2 and Tier 3 Stream Crossings. New tier 2 stream crossings, replacement tier 2 stream crossings that do not meet the requirements of Env-Wt 904.07, and new and replacement tier 3 stream crossings shall be designed and constructed: (a) In accordance with the NH Stream Crossing Guidelines, University of New Hampshire, May 2009, which can be downloaded for free at http://www.unh.edu/erg/stream_restoration/;

Did the General Court direct writing of the UNH Guidelines? No.

Did the Department of Environmental Services write the guidelines? No.

Did the Corps of Engineers write the guidelines? No.

Are they mentioned in RSA 482 A:11? No.

Does adoption by reference make them the law of the land?

Apparently.

The Corps of Engineers issued a modification of the PGP on January 25, 2011, where, if one looks carefully, one will find in Appendix B, Corps Secondary Impacts Checklist, Section 3, paragraph 3.5, the question: "Are stream crossings designed in accordance with PGP GC 21?" Those of you old enough to remember programming in Fortran will recognize this as the regulatory equivalent of an endless do-loop.

In fact, I had hoped to bring with me this morning two T-shirts, one for DES and one for the Corps, each pointing to the other but, they were not yet ready.

That notwithstanding, the study committee provision of HB 621 as amended and passed by the House is an effective first step at examining whether DES exceeded its statutory authority in promulgating and adopting the so-called stream crossing rules, rules that will not expire when the vaunted PGP expires next year, but not for another five years.

During your deliberations, I would urge the committee to remove the provision permitting the replacement of culverts up to 48 inches for two reasons:

- 1) It was offered up by DES simply to stave off an amendment suspending the rules in their entirety pending study; and
- 2) It places in statute specifics that should actually – and ironically - be delineated in rules.

In closing, I applaud Representative Hill's fighting for his town and having the courage to publicly question how rules that on their face are unfounded in statute – and quite likely violations of the NH constitution - were allowed to be drafted, adopted and given the same sovereign weight as laws passed by this General Court. Rules that impact both the public and the private sectors, impacts that will affect our economy in dollars and cents we cannot begin to quantify.

I urge the committee to support Representative Hill, vote Ought to Pass on HB 621 and begin the study committee work to discover whether DES had the statutory authority given it by the General Court to adopt the stream crossing rules.

Thank you.



**US Army Corps
of Engineers**
New England District
696 Virginia Road
Concord, MA 01742-2751

PUBLIC NOTICE

File Number: NAE-2007-461
Date: January 25, 2011
In Reply Refer To: Greg Penta
Phone: (978) 318-8862
E-mail: gregory.r.penta@usace.army.mil

AMENDMENT TO THE DEPARTMENT OF THE ARMY NEW HAMPSHIRE PROGRAMMATIC GENERAL PERMIT

The New England District, U.S. Army Corps of Engineers, 696 Virginia Road, Concord, MA 01742-2751 hereby announces an amendment to the statewide New Hampshire Programmatic General Permit (PGP) pursuant to 33 CFR Part 325.3(b), for minimal-impact activities within the State of New Hampshire.

The amended PGP will continue the simplified review process for activities in Corps jurisdiction under Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act of 1899. The expiration date of the PGP will not change and reissuance of the PGP prior to its expiration on June 28, 2012 will be coordinated with the public, state agencies and federal resource agencies.

You can view the amended New Hampshire PGP that includes all of the changes on our web site at www.nae.usace.army.mil/reg/index.htm. Click "Public Notices" and then "NH PGP Amendment," or click "State General Permits" and then "New Hampshire." You may also call Mr. Penta for a copy at (978) 318-8862. The amended PGP includes the following changes:

1. The citation for the State of New Hampshire Wetland Rules was changed from Env-Wt 100 – 800 to Env-Wt 100 – 900. The citations in Paragraph III(1)(a)(iv) on page 2 were changed. Wording was clarified in Paragraph III(1)(a)(v) on page 3.
2. In Paragraph C on page 5, the wording in the "Application Procedures (Minor and Major Impact Project)" section was changed. Applicants must now send the Request for Project Review (RPR) Form to the NH State Historic Preservation Officer (SHPO) instead of a copy of their Corps/NH DES application materials. This should reduce administrative burden for both the applicant and the SHPO as the SHPO will now have the information they need and applicants will not waste time and resources sending incomplete information in the form or their Corps/NH DES application materials.
3. On Page 8, General Condition 2 was updated. It now provides updated links and instead of generally referencing the guide "Field Indicators for Identifying Hydric Soils in N.E.," it now states that this may be used as a supplement in problem soil situations.
4. The NH PGP Contacts section beginning on page 18 was updated.
5. The web addresses in Appendix A, Page 8, Endnote 7 were updated.

6. The checklist in Appendix B was updated to provide more accurate information, specifically paragraphs 1.1, 2.2, 3.1, 3.2, 3.3 (deleted), and 3.5 (formerly 3.6). The NH Division of Historical Resources requested that we add Paragraph 5 titled "Historic/Archaeological Resources." This is to remind people to submit their Request for Project Review (RPR) Form to the NH State Historic Preservation Officer (SHPO) at the NH Division of Historical Resources as required on Page 5 of the NH PGP (see 2 above).

The NH PGP will expire on June 28, 2012. We will begin its reissuance process approximately in the year before it expires. At that time, we will issue a public notice requesting comments from local, state and federal agencies, and the general public.

THIS NOTICE IS NOT AN AUTHORIZATION TO DO ANY WORK.



Robert J. DeSista
Acting Chief, Regulatory Division

If you would prefer not to continue receiving Public Notices, please contact Ms. Tina Chaisson at (978) 318-8058 or e-mail her at bettina.m.chaisson@usace.army.mil. You may also check here () and return this portion of the Public Notice to: Bettina Chaisson, Regulatory Division, U.S. Army Corps of Engineers, 696 Virginia Road, Concord, MA 01742-2751.

NAME: _____
ADDRESS: _____

General Permit No: NAE-2007-461
Applicant: General Public in New Hampshire

Effective Date: June 28, 2007
Modification Date: January 25, 2011
Expiration Date: June 28, 2012

Department of the Army Programmatic General Permit State of New Hampshire

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

The Corps will review projects according to the State of New Hampshire classification of Minimum, Minor and Major impact projects per the State of New Hampshire Wetland Rules Env-Wt 100 - 900. The Corps review thresholds (see Appendix A) are typically the same as the State's thresholds, but may differ. For example, the wetland fill thresholds for a Minimum are <3,000 square feet (SF) (State and Corps), Minor [$\geq 3,000$ to <20,000 SF (State and Corps)] and Major [$\geq 20,000$ SF (State); $\geq 20,000$ SF to <3 acres (Corps)].

I. GENERAL CRITERIA:

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

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

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

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

II. ACTIVITIES COVERED:

- Work and structures that are located in, or that affect, navigable waters of the United States (U.S.) [33 CFR 328.4(c)] (regulated by the Corps under Section 10 of the Rivers and Harbors Act of 1899);
- The discharge of dredged or fill material into waters of the U.S. (regulated by the Corps under Section 404 of the Clean Water Act)¹; [33 CFR 323.4, Discharges not requiring permits, states any discharge of dredged or fill material that may result from normal farming, silviculture and ranching activities is not prohibited by or otherwise subject to regulation under Section 404 (except as specified in paragraphs (b) and (c) of that section).] and;
- The transportation of dredged material for the purpose of disposal in the ocean (regulated by the Corps under Section 103 of the Marine Protection, Research and Sanctuaries Act). The term “discharge of dredged or fill material” also includes certain discharges resulting from excavation. Applicants should contact the Corps to determine if a particular excavation discharge occurring within waters or wetlands is a regulated activity.

III. PROCEDURES:

1. State Approvals

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

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

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

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

(iv) Pursuant to RSA 485-A:17 and Env-Wq 1503.02 an Alteration of Terrain is required from DES Alteration of Terrain program prior to commencing: projects involving dredging, excavation, filling, mining, transporting of forest products, construction, earth moving, or other significant alteration of the characteristics of the terrain as defined in Env-Wq 1500 that will occur in or on the border of the surface waters of the state; or construction, earth moving, or other significant alteration of the characteristics of the terrain as defined Env-Wq 1502 when a contiguous area of 50,000 square feet or more if within the protected shoreland as defined by RSA 483-B or 100,000 square feet or more in all other areas will be disturbed.

(v) Comprehensive Shoreland Protection Act: Excavation, filling and construction within the Protected Shoreland zone will require approval from DES in accordance with the Comprehensive Shoreland Protection Act pursuant to RSA 483-B. Minimum standards within the Protected Shoreland including the maintenance of the waterfront buffer, natural woodland buffer, as well as impervious surface limits are also set by this statute and rules (Env-Wq 1400)..

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

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

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

2. Corps Authorizations

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

MINIMUM IMPACT PROJECTS

Eligibility

Activities in NH that:

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

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

Abbreviated Application Procedures (Minimum Impact Project)

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

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

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

MINOR AND MAJOR IMPACT PROJECTS

Eligibility

Activities in NH that:

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

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

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

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

C. Application Procedures (Minor and Major Impact Project)

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

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

Information Required:

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

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

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

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

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

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

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

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

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

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

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

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

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

E. Emergency Procedures: Minor and Major Impact Projects

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

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

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

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

Projects with construction of solid fill structures or discharge of fill that may extend beyond the coastline or the baseline from which the territorial sea is measured (i.e., mean low water), must be coordinated with Minerals Management Service (MMS), Outer Continental Shelf (OCS) Survey Group, pursuant to the Submerged Lands Act (43 USC 1301-1315, 33 CFR 320.4(f)). The Corps will forward project information to MMS for their review. The MMS will coordinate their determination with the Department of the Interior (DOI) Solicitor's Office. The DOI will have 15 calendar days from the date MMS received the project information to determine if the baseline will be affected. If the Corps is not notified within the 15 day period it will assume a "no effect" determination. If the solicitor's notification to the Corps is verbal, it must be followed with a written confirmation within 10 business days of the date of the verbal notification. This procedure will be eliminated if the State of New Hampshire provides a written waiver of interest in any increase in submerged lands caused by a change in the baseline resulting from solid fill structures or fills authorized under this PGP.

IV. INDIVIDUAL PERMIT

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

V. GENERAL PERMIT CONDITIONS:

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

General Requirements:

- 1. Other Permits.** Authorization under this general permit does not obviate the need to obtain other Federal, state, or local authorizations required by law or to comply with all Federal, State of New Hampshire, or local laws.

- 2. Federal Jurisdictional Boundaries.** Applicability of this GP shall be evaluated with reference to Federal jurisdictional boundaries. Applicants are responsible for ensuring that the boundaries used satisfy the Federal criteria defined at 33 CFR 328-329. These sections prescribe the policy, practice and procedures to be used in determining the extent of jurisdiction of the Corps concerning “waters of the U.S.” and “navigable waters of the U.S.” (Note: Waters of the U.S. include the subcategories “navigable waters of the U.S.” and “wetlands.”) Wetland boundaries shall be determined in accordance with the most recent versions of the a) Corps of Engineers Wetlands Delineation Manual and b) Regional Supplement to the Corps Delineation Manual (see the “Northcentral and Northeast Regional Supplement” for New England states), both located at www.usace.army.mil/CECW/Pages/techbio.aspx. Use the most recently approved version of the National Wetland Plant List at http://wetland_plants.usace.army.mil. The Natural Resources Conservation Service (NRCS) publishes the current list of hydric soil indicators at <http://soils.usda.gov> (click “Hydric Soils”). The regional guide “Field Indicators for Identifying Hydric Soils in N.E.” at www.neiwpc.org/hydricsoils.asp may be used as a supplement in problem soil situations.

- 3. Minimal Effects and Secondary (Indirect) and Cumulative Impacts.** Projects authorized by this PGP shall have no more than minimal individual, secondary and cumulative adverse environmental impacts to waters of the U.S. as a result of construction and operation of the project. The PGP does not impose any obligation on DES to assess secondary impacts that does not already exist in state law. See Appendix A, Endnote 3 for a secondary impacts definition. In order for the Corps to determine whether independent Corps review of a project with possible secondary and cumulative impacts is required, applicants must complete the Corps Secondary Impacts Checklist at Appendix B. For convenience, Appendix B is also provided as an attachment to the DES Wetlands Bureau application and Permit by Notification forms.
 - For waterway and/or wetland areas, secondary impacts (e.g., areas drained, flooded, cleared, excavated or fragmented) shall be added to the total fill area when determining the project review category (Minimum, Minor/Major or Individual Permit review) for the Corps.
 - For the project area, the Corps, State and Federal resource agencies will review projects to determine if there are discernable secondary impacts on waters and wetlands necessitating a higher review level. The Corps Secondary Impacts Checklist will assist with this review.

- 4. Discretionary Authority.** Notwithstanding compliance with the terms and general conditions of this PGP, the Corps retains discretionary authority to require either a Minor/Major Project review or an Individual Permit review for any project, including a higher level review for a Minimum Impact Project, based on concerns for the aquatic environment or for any other factor of the public interest (33 CFR 320.4(a)). This authority is invoked on a case-by-case basis whenever the Corps determines that the potential impacts of the proposal warrant either a Minor/Major Project review or an Individual Permit review based on the concerns stated above. This authority may be invoked for projects with cumulative environmental impacts that are more than minimal, or if there is a special resource or concern associated with a particular project that is not already covered by the remaining conditions of the PGP and that

warrants greater review. Whenever the Corps notifies an applicant that either a Minor/Major Impact Project review or Individual Permit review is required, authorization under this PGP is void, and no work may be conducted until the Corps issues the required authorization or until the Corps notifies the applicant that further review has demonstrated that the work may proceed under this PGP.

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

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

General Conditions Related to National Concerns:

7. Historic Properties. Any activity authorized by this PGP shall comply with Section 106 of the National Historic Preservation Act. Information on the location and existence of historic resources can be obtained from the New Hampshire Historic Preservation Office (See page 18) and the National Register of Historic Places. Project proponents shall apply to the Corps for all projects that would otherwise qualify for a Minimum Impact Project if there is the potential for an effect on a historic property within the permit area or any known historic property that may occur outside the permit area. Historic properties include those that are eligible for inclusion, but not necessarily listed on the National

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

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

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

- May affect a threatened or endangered species, a proposed species, designated critical habitat, or proposed critical habitat identified under the Federal Endangered Species Act (ESA);
- Would result in a “take” of any threatened or endangered species of fish or wildlife; or
- Would result in any other violation of Section 9 of the ESA protecting threatened or endangered species of plants.

Applicants shall notify the Corps if any listed species or their critical habitat, or proposed species or their critical habitat, is in the vicinity of the project and shall not begin work until notified by the Corps that the requirements of the ESA have been satisfied and that the activity is authorized. Information on the location of threatened and endangered species and their critical habitat can be obtained from the U.S. FWS and NMFS (see page 19). If consultation with the FWS or NMFS results in project modifications or permit conditions which resolve the issue, the Corps may issue a PGP. State-listed species are also considered under this PGP.

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

11. Wild and Scenic Rivers. Any activity that occurs in a component of, or within 0.25 miles up or downstream of the main stem or tributaries of a river segment of, or that has the potential to alter flows within a river within the National Wild and Scenic River System, must be reviewed by the Corps under the review procedures of this PGP regardless of the size of impact. This condition applies to both designated Wild and Scenic Rivers and rivers officially designated by Congress as Study Rivers for possible inclusion while such rivers are in an official study status. If preapplication consultation between the applicant and the administering agency [National Park Service (NPS) or USDA Forest Service] has occurred whereby NPS has made a determination that the proposed project is appropriate for authorization under this PGP (with respect to Wild and Scenic River issues), this determination should be furnished to the Corps with submission of the application. National Wild and Scenic Rivers System segments for New Hampshire as of February 2007, include: Wildcat Brook from its headwaters to the confluence with the Ellis River (administered through the White Mountain National Forest), and the Lamprey River from the West Epping Dam to the confluence with the Piscassic River (administered by the NPS, Northeast Region).

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

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

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

General Conditions Related to Minimizing Environmental Impacts:

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

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

16. Heavy Equipment in Wetlands. Heavy equipment other than fixed equipment (drill rigs, fixed cranes, etc.) working in wetlands shall not be stored, maintained or repaired in wetlands, unless it is less environmentally damaging otherwise, and as much as possible shall not be operated there. Where construction requires heavy equipment operation in wetlands, the equipment shall either have low ground pressure (<3 psi), or shall not be located directly on wetland soils and vegetation; it shall be placed on swamp mats¹ that are adequate to support the equipment in such a way as to minimize disturbance of wetland soil and vegetation. Swamp mats are to be placed in the wetland from the upland

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

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

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

- Swamp/construction mats and corduroy roads (see GC 16 above) are considered as temporary fill when they are removed immediately upon work completion.
- All temporary fill shall be stabilized to prevent its eroding into portions of waters of the U.S. where it is not authorized.
- Unconfined temporary fill authorized for discharge into waters of the U.S. shall consist of material that minimizes impacts to water quality (e.g. sandbags or clean, gravel and/or stone).
- Temporary fill authorized for discharge into wetlands shall be placed on geotextile fabric laid on the pre-construction wetland grade. (Swamp and timber mats are excluded from this requirement.)
- Temporary fill shall be removed as soon as it is no longer needed, and it shall be disposed of at an upland site and suitably contained to prevent its subsequent erosion into waters of the U.S.
- Waters of the U.S. where temporary fill was discharged shall be restored (see GC 18).
- If temporary fill is staged and then returned to its original location, e.g., sewer projects through wetlands, the original location shall be restored.
- Temporary fills shall be disposed of at an upland site and suitably contained to prevent erosion and/or transport to a waterway or wetland.
- Swamp mats shall be properly installed (i.e., not dragged into position) and removed immediately upon the completion of work.

18. Work Site Restoration.

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

19. Sedimentation and Erosion Control. Adequate sedimentation and erosion control management measures, practices and devices, such as phased construction, vegetated filter strips, geotextile silt fences, stormwater detention and infiltration systems, sediment detention basins, or other devices shall be installed and properly maintained to reduce erosion and retain sediment on-site during and after

construction. They shall be capable of preventing erosion, of collecting sediment, suspended and floating materials, and of filtering fine sediment. The disturbed areas shall be stabilized and these devices shall be removed upon completion of work. The sediment collected by these devices shall be removed and placed at an upland location, in a manner that will prevent its later erosion into a waterway or wetland. All exposed soil and other fills shall be permanently stabilized at the earliest practicable date.

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

21. Waterway/Wetland Work and Crossings

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

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

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

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

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

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

(e) Only maintenance or replacement of serviceable crossings with an exact replica crossing (size, material, elevation, etc.) in the same footprint with no expansion or change in use/circumstances is considered as a maintenance project, and therefore may proceed as a Minimum Impact Project. Any deviation deems the crossing as "new." Note: The State of NH's maintenance provisions differ from the Corps and will likely require reporting and written authorization from the State.

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

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

shall take necessary measures to correct wetland damage due to lack of hydraulic connectivity.

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

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

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

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

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

22. Water Pollution Prevention and Control. Construction or operation of any activity involving a discharge into a water of the U.S. authorized under this PGP shall be consistent with applicable water quality standards, effluent limitations, standards of performance, prohibitions, and pretreatment standards and management practices established pursuant to the CWA (33 USC 1251), and applicable State and local laws. If applicable water quality standards, limitations, etc., are revised or modified during the term of this permit, the authorized work shall be modified to conform to these standards within six months of the effective date of such revision or modification, or within a longer period of time deemed reasonable by the Corps in consultation with the EPA. Any activity involving a discharge of pollutants shall be constructed and operated so that the activity results in no additional discharge of relevant pollutants to impaired waters. Projects will be reviewed to determine if a project may result in a discharge of a relevant pollutant to an impaired water. Any project which may result in a discharge of a relevant pollutant into an impaired water will necessitate a higher-level review. Unless otherwise notified by the NH DES, applicants may presume that the Section 401 WQC for this PGP constitutes the Section 401 WQC for their Section 404 activity, provided the terms and conditions of this PGP are met.

23. Spawning Areas. Discharges of dredged or fill material, and/or suspended sediment producing activities in fish and shellfish spawning or nursery areas, or amphibian and migratory bird breeding areas, during spawning or breeding seasons shall be avoided. Impacts to these areas shall be minimized to the maximum extent practicable during all times of the year. Information on spawning habitat for species managed under the Magnuson-Stevens Fishery Conservation and Management Act (i.e., EFH for spawning adults) can be obtained from the NMFS website at: www.nero.noaa.gov/hcd.

24. Storage of Seasonal Structures. Coastal structures such as pier sections, floats, etc., that are removed from the waterway for a portion of the year (often referred to as seasonal structures) shall be stored in an upland location, located above mean high water (MHW) and not in tidal wetlands. These seasonal structures may be stored on the fixed, pile-supported portion of the structure that is seaward of MHW. This is intended to prevent structures from being stored on the marsh substrate and the substrate seaward of MHW.

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

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

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

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

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

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

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

Procedural Conditions:

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

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

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

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

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

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

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

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

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

Duration of Authorization/Grandfathering:

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

- For Minimum and Minor Impact Projects that haven't received an authorization letter, 12 months after this PGP's expiration date.

- For projects that have received an authorization letter, until the project-specific date that the Corps provides to the permittee in the PGP authorization letter.

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

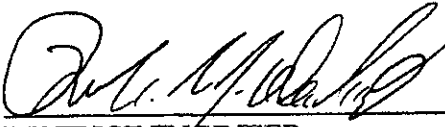
PGP activities will remain authorized as specified above unless:

- The PGP is either modified or is revoked, or
- Discretionary authority has been exercised on a case-by-case basis to modify, suspend or revoke the authorization in accordance with 33 CFR 325.2(e)(2).

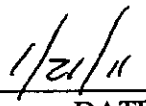
37. Previously Authorized Activities.

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

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



DISTRICT ENGINEER



DATE

VI. NH PGP CONTACTS:

1. FEDERAL

U.S. Army Corps of Engineers
New England District, Regulatory Branch
696 Virginia Road
Concord, MA 01742-2751
(800) 343-4789, (978) 318-8335
(978) 318-8303 (fax)

(Federal Endangered Species)
U.S. Fish and Wildlife Service
70 Commercial Street
Suite 300
Concord, NH 02813
(603) 223-2541

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

U.S. Environmental Protection Agency
Region 1
1 Congress Street, Suite 1100
Boston, MA 02114-2023
(617) 918-1589

(Federal Endangered Species & EFH)
National Marine Fisheries Service
Northeast Region
One Blackburn Drive
Gloucester, MA 01930
(978) 281-9102

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

2. STATE

NH Dept. of Environmental Services

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

New Hampshire Coastal Program
Suite 200
222 International Drive, Suite 175
Portsmouth, NH 03801
(603) 559-1500, (603) 559-1510 (fax)

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

NH Dept. of Resources & Economic Development

(State Endangered Species)
Natural Heritage Bureau
172 Pembroke Road
P.O. Box 1856
Concord, NH 03302
(603) 271-2215, x323

3. HISTORIC RESOURCES

NH Division of Historical Resources
State Historic Preservation Office
19 Pillsbury Street
Concord, NH 03301-3570
(603) 271-3483

4. ORGANIZATIONAL WEBSITES

Corps of Engineers	www.nae.usace.army.mil/reg
Corps of Engineers, headquarters	www.usace.army.mil
Environmental Protection Agency	www.epa.gov/owow/wetlands
National Marine Fisheries Service, Northeast Region	www.nero.noaa.gov/hcd
National Marine Fisheries Service, National Headquarters	www.nmfs.noaa.gov/habitat
U.S. Fish and Wildlife Service	www.fws.gov
National Park Service	www.nps.gov/rivers/index.html
NH DES Wetlands Bureau	www.des.nh.gov/organization/divisions/water/wetlands/index.htm
NH wetlands rules	www.des.nh.gov/organization/commissioner/legal/rules/index.htm#wetlands
NH Fish and Game Department	www.wildlife.state.nh.us
NH Coastal Program	http://des.nh.gov/organization/divisions/water/wmb/coastal/index.htm
NH Division of Historical Resources	www.nh.gov/nhdhr
NH GIS	www.granit.unh.edu
NH Natural Heritage Bureau, Dept. of Resources and Economic Development	nhnaturalheritage.org

APPENDIX A: DEFINITION OF CATEGORIES

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

I. INLAND WATERS & WETLANDS
Inland Waters and Wetlands: Waters that are regulated under Section 404 of the CWA, including rivers, streams, lakes, ponds and wetlands [33 CFR 328.4)(c)]. This Inland Waters and Wetlands section excludes tidal waters, but regulates fill in the Federally-designated navigable waters (Merrimack River from the MA-NH State line to Concord, NH); Lake Umbagog within NH; and the Connecticut River to Pittsburg, NH. The jurisdictional limits are the ordinary high water (OHW) mark in the absence of adjacent wetlands, beyond the OHW mark to the limit of adjacent wetlands when adjacent wetlands are present, and the wetland limit when only wetlands are present. For the purposes of this PGP, fill placed in the area between the mean high water (MHW) and the high tide line (HTL), and in the bordering and contiguous wetlands¹ to tidal waters are reviewed in II. Tidal/Navigable Waters (see Page 4 below).

	MINIMUM IMPACT PROJECTS ²	MINOR & MAJOR IMPACT PROJECTS	INDIVIDUAL PERMIT
(a) NEW FILL/ EXCAVATION DISCHARGES	<p><3,000 SF of waterway and/or wetland fill and secondary³ impacts, (e.g., areas drained, flooded, cleared, excavated or fragmented). Fill area includes all temporary and permanent fill, and certain excavation discharges (except for incidental fallback⁴). Swamp mats and corduroy roads are considered as fill (see General Condition (GC) 17).</p> <p><u>Provided:</u></p> <ul style="list-style-type: none"> Projects comply w/all GCs, including: GC 5 - Single and Complete Projects GC 15 - Avoidance, Minimization and Mitigation <p><u>This category excludes:</u></p> <ul style="list-style-type: none"> Dams, dikes, or activities involving water diversions⁵. Work in EFH waters (see GC 10 and Appendix C) Work in special aquatic sites (SAS)⁶ other than wetlands, and work in special wetlands⁷ [including vernal pools⁷ (VPs)]. Work on Corps properties & Corps-controlled easements⁸ 	<p>3,000 SF to ≤3 acres waterway and/or wetland fill and secondary³ impacts, (e.g., areas drained, flooded, cleared, excavated or fragmented). Fill area includes all temporary and permanent fill, and certain excavation discharges (except for incidental fallback⁴). Swamp mats and corduroy roads are considered as fill (see GC 17).</p> <p>Swamp mats filling any area ≥3,000 SF are reviewed as Minor Impact Projects (see GCs 16 & 17).</p> <p>Projects with proactive restoration⁹ as a primary purpose with impacts of any size ≥3,000 SF.</p> <p>Specific activities with impacts ≥3,000 SF required to effect the containment, stabilization, or removal of hazardous or toxic waste materials performed, ordered or sponsored by a government agency with established legal or regulatory authority. Wetlands must be restored in place.</p> <p>The applicant shall delineate all special wetlands⁷ including VPs on the property using Federal delineation methods (see GC 2). The Corps and the DES may waive these delineation requirements on a case-by-case basis after consultation with each other, the EPA and U.S. FWS.</p>	<p>>3 acres waterway and/or wetland fill and secondary³ impacts, (e.g., area drained, flooded, cleared, excavated or fragmented). Fill area includes all temporary and permanent fill, and certain excavation discharges (except for incidental fallback⁴).</p>

<p>(b) RIVER/STREAM /BROOK WORK & CROSSINGS.</p> <p>WATERWAY/ WETLAND CROSSINGS</p>	<p>Stream crossings conform with the NH Stream Crossing Guidelines, when the State has adopted these guidelines as regulations, and this PGP's general conditions. The requirements in GC 21 are especially relevant:</p> <ul style="list-style-type: none"> • In-stream work limited to Jul 15-Oct 1. • Culverts installed with inverts embedded below existing streambed grade to avoid "hanging" & associated impediments to fish passage. • Culverts at waterbody crossings preserve hydraulic connectivity, at its present level, between the wetlands on either side of the road. <p><u>Excludes:</u></p> <ul style="list-style-type: none"> • Slip lining, plastic pipes, HDPP & flow velocity increases (GC 21) • No open trench excavation in flowing waters (GC 21). • In-stream work limited to Jul 15-Oct 1 (GC 21). • Work in SAS⁶ and special wetlands⁷ (GC 26). • Work in EFH waters (see GC 10 and Appendix C). • No work on Corps properties & Corps-controlled easements⁸. 	<p>Stream crossings not conforming with the NH Stream Crossing Guidelines, when the State has adopted these guidelines as regulations.</p> <p>All SAS⁶ & special wetlands⁷ within the project area shall be delineated.</p>	
<p>(c) BANK STABILIZATION PROJECTS</p>	<p>Inland bank stabilization <100 FT long and <1 CY of fill per linear foot below ordinary high water (OHW)</p> <p><u>Provided:</u></p> <ul style="list-style-type: none"> • In-stream work limited to Jul 15-Oct 1. • No work in VPs⁷ • No work in SAS⁶ and special wetlands⁷. • No open trench excavation in flowing waters (see GC 21). • No structures angled steeper than 3H:1V allowed. Only rough-faced stone or fiber roll revetments allowed. • No work on Corps properties & Corps-controlled easements⁸. 	<p>Inland bank stabilization projects ≥100 FT long or ≥1 CY per linear foot below OHW.</p> <p>All SAS⁶ & special wetlands⁷ within the project area shall be delineated. The Corps may waive this requirement on a case-by-case basis in consultation with the EPA, NMFS and U.S. FWS.</p>	
<p>(d) REPAIR AND MAINTENANCE OF AUTHORIZED FILLS</p>	<p>Repair/maintenance of existing, currently-serviceable, authorized fills, including maintenance of existing flood control facilities, with no expansion or change in use.</p> <ul style="list-style-type: none"> • <u>Conditions of the original authorization apply</u> • <u>Minor deviations in fill design allowed¹⁰</u> <p><u>Note: The State's maintenance provisions differ from the Corps and may require written authorization from the State, even though it's not required from the Corps.</u></p>	<p>Repair/maintenance of existing, currently-serviceable, authorized fills, with an expansion or a change in use ≥3000 SF and <3 acres.</p> <p>Replacement of non-serviceable authorized fills ≥3000 SF and <3 acres.</p>	<p>Repair/maintenance of existing, currently-serviceable, authorized fills, with an expansion or a change in use ≥3 acres.</p> <p>Replacement of non-serviceable authorized fills, ≥3 acres.</p>
<p>(e) MISC.</p>	<p>Oil spill clean-up discharges. Fish and wildlife harvesting such as duck blinds. Scientific measurement devices and survey activities, e.g., exploratory drilling, surveying, sampling. Doesn't include oil/gas exploration and fills for roads or construction pads. Includes monitoring wells.</p>		

II. TIDAL/ NAVIGABLE WATERS	Tidal/Navigable Waters of the U.S.: Waters that are subject to the ebb and flow of the tide (Section 10 Rivers & Harbors Act of 1899) (33 CFR 329) and <i>structures and dredging</i> in the Federally-designated navigable waters, which are regulated below in Activities (b), (c), (d), (e) and (f). (<i>Fill</i> in the Federally-designated navigable waters are regulated in I. Inland Waters and Wetlands above.) The Federally-designated navigable waters are the Merrimack River from the MA-NH State line to Concord, NH; Lake Umbagog within NH; and the Connecticut River to Pittsburg, NH. The jurisdictional limits for this section, II. Tidal/Navigable Waters, are the mean high water (MHW) line in tidal waters and the OHW mark in non-tidal portions of the Federally designated navigable waters. For the purposes of this PGP, fill placed between MHW and the high tide line (HTL) and in the bordering and contiguous wetlands ¹ to tidal waters are reviewed in this Tidal/Navigable Waters section.		
	Projects not meeting the Minimum Project criteria must apply/report to the Corps as either a Minor/Major Project or Individual Permit project. All Minimum or Minor/Major projects must comply with all of this PGP's applicable terms (Pages 1-7) and General Conditions (Pages 8-17).		
	MINIMUM PROJECTS²	MINOR & MAJOR PROJECTS	INDIVIDUAL PERMIT (IP)
(a) FILL	<p>No new or previously unauthorized fills, other than:</p> <ul style="list-style-type: none"> Discharges of dredged or fill material incidental to the construction of bridges across navigable waters of the U.S., including cofferdams, abutments, foundation seals, piers, and temporary construction and access fills provided the U.S. Coast Guard authorizes such discharges as part of the bridge permit. Causeways and approach fills are not included in this category and require Minor/Major or Individual Permit authorization. 	<p>≤1 acre waterway fill and secondary waterway impacts (e.g., areas drained, flooded, cleared, or fragmented). Fill area includes all temporary and permanent waterway fills. Excludes work in SAS⁶ and shellfish beds¹¹.</p> <p>Specific activities with impacts of any area required to effect the containment, stabilization, or removal of hazardous or toxic waste materials performed, ordered or sponsored by a government agency with established legal or regulatory authority. Wetlands must be restored in place.</p> <p>Projects with proactive restoration⁹ (SAS⁶, anadromous fish runs, shellfish beds¹¹, etc.) as a primary purpose with impacts of any size.</p>	<p>>1 acre waterway fill and secondary waterway impacts (e.g., areas drained, flooded, cleared or fragmented). Fill area includes all temporary and permanent waterway fills.</p> <p>Temporary or permanent fill and/or excavation in SAS⁶ or shellfish beds¹¹.</p> <p>EIS required by the Corps.</p>
(b) REPAIR AND MAINT. WORK	<p>Repair or maintenance of existing, currently serviceable, authorized structures and fills.</p> <p><u>Provided:</u></p> <ul style="list-style-type: none"> No expansion or change in use. Must be rebuilt in same footprint, however minor deviations in structure design allowed.¹⁰ 	<p>Repair/maintenance of currently serviceable authorized fills with expansion or a change in use <1 acre.</p> <p>Replacement of non-serviceable authorized fills, including expansion or a change in use <1 acre.</p> <p>Repair/maintenance of currently serviceable authorized structures w/expansion where the structure (existing + expansion) qualifies as a Minor/Major [see (e) below].</p> <p>Replacement of non-serviceable authorized structures w/expansion where the structure (existing + expansion) qualifies as a Minor/Major [see (e) below].</p>	<p>Repair/maintenance of currently serviceable authorized fills with expansion or a change in use ≥1 acre.</p> <p>Replacement of non-serviceable authorized fills, including expansion or a change in use, totaling ≥1 acre.</p> <p>Repair/maintenance of currently serviceable, authorized structures w/expansion where the structure (existing + expansion) qualifies for an IP [see (e) below].</p> <p>Replacement of non-serviceable, authorized structures where the structure (existing + expansion, if any) qualifies for an Individual Permit [see (e) below].</p>

<p>(c) DREDGING</p>	<p>For waters that are subject to the ebb and flow of the tide, maintenance dredging¹³ for navigational purposes ≤3,000 SF with upland disposal. Includes return water from upland contained disposal area.</p> <p><u>Provided:</u></p> <ul style="list-style-type: none"> • Dredging & disposal operation limited to Nov 15 – Mar 15. • No impacts to SAS⁶ or shellfish beds¹¹. • No dredging in intertidal areas. • Proper siltation controls are used. <p>For Federally-designated navigable waters (see definition of Tidal/Navigable Waters of the U.S. above), maintenance dredging¹³ ≤3,000 SF with upland disposal. Includes return water from upland contained disposal area.</p>	<p>For waters that are subject to the ebb & flow of the tide, maintenance dredging¹¹ >3,000 SF or new dredging¹³ <20,000 SF.</p> <p><u>Provided:</u></p> <ul style="list-style-type: none"> • Dredging & disposal operation limited to Nov 15-Mar 15. • No impacts to SAS⁶ or shellfish beds¹¹. • Disposal includes: 1. upland; 2. beach nourishment of any size provided the primary purpose of the dredging is navigation; or 3. open water & confined aquatic disposal, if Corps, in consultation with Federal and State agencies, finds the material suitable. <p>For Federally-designated navigable waters (see def. of Tidal/Navigable Waters of the U.S. above), maintenance¹² dredging of any area >3,000 SF or new dredging¹² of any area. Includes return water from upland contained disposal area.</p> <p>Projects with proactive restoration⁹ (SAS⁶, shellfish beds¹¹, anadromous fish run, etc.) as a primary purpose with impacts of any size.</p> <p>Specific activities with impacts of any area or cubic yardage required affecting the containment, stabilization, or removal of hazardous or toxic waste materials that are performed, ordered, or sponsored by a government agency with established legal or regulatory authority may be reviewed as a Minor/Major project. Wetlands must be restored in place.</p> <p>All SAS⁶ and shellfish beds¹¹ within the project area shall be delineated.</p>	<p>New dredging¹³ ≥20,000 SF</p> <p>Dredging for non-navigational purposes (sand mining). E.g., the primary purpose of obtaining the sand is for beach nourishment or upland use.</p>
<p>(d) MOORINGS</p>	<p>Private, non-commercial, non-rental, single-boat moorings.</p> <p><u>Provided:</u></p> <ul style="list-style-type: none"> • Proper/eco-friendly moorings are used so chains or other connections do not rest on the bottom in veg. shallows¹⁵. • Authorized by the State. • Not associated with a boating facility¹⁴. • Moorings in Federal Anchorage¹² not associated with a boating facility¹⁴. • Not located within the buffer zone of the horizontal limits of a Federal Channel¹². • No interference with navigation. 	<p>Moorings not meeting the terms of a Minimum project.</p> <p>Moorings located such that they, and/or vessels docked or moored at them, are within the buffer zone of the horizontal limits of a Federal Channel¹².</p>	<p>Moorings and/or their moored vessels within the horizontal limits of a Federal Channel¹².</p>

(e) PILE-SUPPORTED STRUCTURES AND FLOATS	No allowances for pile-supported structures and floats.	<p>All SAS⁶ and shellfish beds¹¹ within the project area shall be delineated.</p> <p>Recommendations for private structures and floats:</p> <ul style="list-style-type: none"> • Bottom-anchored floats ≤400 SF • Pile-supported structures for navigational access to the waterway ≤400 SF with attached floats ≤150 SF. • Pile-supported structures are ≤6' wide and have at least a 1:1 height:width ratio¹⁶. • Float stops, chains, or other devices must be used to provide ≥ 2.5-foot clearance between the bottom of the float and the substrate during all tides. • Pile-supported structures & floats are not located within 25' of vegetated shallows¹⁵ and moored vessels are not positioned over SAS⁶. • Structures extend ≤75 FT waterward from MHW. • No structure extends across >25% of the waterway width at MLW. • Not located within the buffer zone of the horizontal limits of an FNP¹². 	<p>Structures or floats located such that they and/or vessels docked at them are within the horizontal limits of an FNP¹².</p> <p>Structures or floats associated with a new or previously unauthorized boating facility.¹⁴</p>
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	MINIMUM PROJECTS²	MINOR & MAJOR PROJECTS	IP
(f) MISC.	<p>Activities not regulated by the DES Wetlands Bureau, formerly authorized under the Nationwide Permit Program and listed in Appendix A of this document.</p> <p>Research, educational, experimental or publicly funded aquaculture projects that don't exceed 1,000 SF in area, aren't located in SAS⁶ or intertidal areas, culture only indigenous species, use only "transient gear" type cages or bottom culture with predator netting, are marked to inform mariners of the location of the gear, have a minimum clearance of 4 FT between the top of the gear and the elevation of MLW in areas where the elevation of the sea floor is above - 15 FT MLW, have a minimum clearance of 10 FT between the top of the gear and the elevation of MLW in areas where the elevation of the sea floor is equal to or below -15 FT MLW, and have been reviewed and approved in writing by the NH DES.</p> <p>Temporary oil spill clean up structures and fill.</p> <p>Temporary buoys, markers, floats, etc. for recreational use during specific events, provided:</p> <ul style="list-style-type: none"> • They are in place for no more than 30 days and are removed within 15 days after use is discontinued. • Proper/eco-friendly moorings must be used so chains or other connections don't rest on the bottom for buoys, floats and vessels located over vegetated shallows¹⁵ 	<p>Aquaculture projects that do not meet the terms of a Minimum Impact Project and aren't located in SAS⁶.</p> <p>Structures/work in or affecting tidal or navigable waters that are not defined under any other headings. Includes but is not limited to utility lines, aerial transmission lines, pipelines, outfalls, boat ramps, bridges, tunnels and horizontal directional drilling activities seaward of the MHW line.</p>	EIS required by the Corps.

	<ul style="list-style-type: none"> • Float stops, chains, or other devices must be used to provide ≥ 2.5-foot clearance between the bottom of the float and the substrate during all tides <p>Temporary buoys, markers, floats, etc. for recreational use during specific events at Corps reservoirs. The reservoir manager must approve each buoy or marker individually.</p> <p>The placement of aids to navigation and regulatory markers which are approved by and installed in accordance with the requirements of the U.S. Coast Guard. (See 33 CFR 66, Chapter I, subchapter C).</p> <p>Structures, buoys, floats and other devices placed within anchorage or fleeting areas to facilitate moorage of vessels where such areas have been established for that purpose by the U.S. Coast Guard, provided:</p> <ul style="list-style-type: none"> • Placement in the area is away from vegetated shallows • If the above isn't possible, proper/eco-friendly moorings are used so chains or other connections don't rest on the bottom in veg. shallows¹⁵. • Float stops, chains, or other devices must be used to provide ≥ 2.5-foot clearance between the bottom of the float and the substrate during all tides <p>Scientific measurement devices, and small weirs and flumes constructed primarily to record water quantity and velocity provided the discharge of fill is limited to 10 cubic yards. No work may restrict movement of aquatic species or potentially threaten to impact or entangle sea turtles or marine mammals in near-coastal waters.</p> <p>Fish and wildlife harvesting devices and activities such as pound nets, crab traps, crab dredging, eel pots, lobster traps, duck blinds, clam and oyster digging, shellfish seeding, and small fish attraction devices such as open water fish concentrators (sea kites, etc.). Provided: no hazard to navigation; activity is not in wetlands or sites that support submerged vegetation (including sites where submerged aquatic vegetation is determined to exist, but may not be present in a given year). This does not authorize artificial reefs or impoundments and semi-impoundments of waters of the U.S. for the culture or holding of motile species such as lobster, or the use of covered oyster trays or clam racks.</p> <p>Survey activities including core sampling, seismic exploratory operations, plugging of seismic shot holes, other exploratory-type bore holes and oil and gas test wells, soil survey and sampling, and historic resources surveys. Discharges and structures associated with the recovery of historic resources are not authorized. Drilling and the discharge of excavated material from test wells for oil and gas exploration are not authorized. Fill placed for roads, pads and other similar activities is not authorized, nor is any permanent structure.</p>		
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End Notes/Definitions

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

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

³ **Direct, Secondary (Indirect), and Cumulative Impacts:**

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

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

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

⁴ **Incidental Fallback:** The term "discharge of dredged or fill material" also includes certain discharges resulting from excavation.

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

⁶ **Special Aquatic Sites:** These include both inland & saltmarsh wetlands, mud flats, vegetated shallows¹⁵, coral reefs, and riffle & pool complexes. (40 CFR 230).

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

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

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

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

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

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

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

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

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

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

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

Vernal Pool (VP) and Habitat: VPs are confined basin depressions with water for two or more continuous months in the spring and/or summer, for which evidence of one of more of the following indicator vernal pools species: wood frogs (*Rana sylvatica*), mole salamanders (*Ambystoma* spp), and fairy shrimp (*Eubranchipus* spp) has been documented **OR** for which evidence of two or more of the following facultative organisms: caddisfly (*Trichoptera*) larvae casings, fingernail clams (*Sphaeriidae*), or amphibious snails (*Basammatophora*) and evidence that the pool does not contain an established reproducing fish population has been documented. Vernal pool habitat is the seasonal pool depression, seasonal pool envelope (100 FT radius from the VP edge) and seasonal pool terrestrial habitat (750 FT radius from the VP edge). The Corps will determine on a case-by-case basis which vernal pools are within their jurisdiction.

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

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

¹⁰ **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.

- ¹¹ **Shellfish Beds:** Shellfish beds (open or closed) used for recreation harvest as designated by the NH Fish and Game Department. Maps of these shellfish beds are located at: www.nae.usace.army.mil/reg/NHFGRecreationHarvestShellfishBeds.pdf.
- ¹² **Federal Navigation Projects (FNPs):** FNPs are comprised of Federal channels and Federal anchorages. See Appendix D for a list of FNPs. Contact the Corps for specific locations and information. **Horizontal Limits:** The outer edge of an FNP. **Buffer zone:** Equal to three times the authorized depth of that channel.
- ¹³ **Maintenance Dredging.** Includes areas and depths previously dredged and authorized by the Corps. Proof of authorization is required. **New Dredging:** Includes dredging proposed in previously un-dredged areas and/or in areas exceeding previously authorized dimensions (deeper or wider than previously authorized) excluding normal overdredge.
- ¹⁴ **Boating Facilities:** Facilities that provide, rent or sell mooring space, e.g., marinas, yacht clubs, boat yards, dockominiums.
- ¹⁵ **Vegetated Shallows:** Subtidal areas that support rooted aquatic vegetation such as eelgrass (*Zostera marina*) and widgeon grass (*Ruppia maritima*). (Doesn't include salt marsh.)
- ¹⁶ **Height:Width Ratio:** The height of structures shall at all points be equal to or exceed the width of the deck. For the purpose of this definition, height shall be measured from the marsh substrate to the bottom of the longitudinal support beam.



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

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

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

Required information for all projects:

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

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

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

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

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

Required information for projects in tidal waters:

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

Required information for tidal water dredge projects:

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

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

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

1. Impaired Waters	Yes	No
1.1 Will any work occur within 1 mile upstream in the watershed of an impaired water? See http://des.nh.gov/organization/divisions/water/wmb/section401/impaired_waters.htm to determine if there is an impaired water in the vicinity of your work area.*		
2. Wetlands	Yes	No
2.1 Are there are streams, brooks, rivers, ponds, or lakes within 200 feet of any proposed work?		
2.2 Are there proposed impacts to SAS, shellfish beds, special wetlands and vernal pools (see PGP, GC 26 and Appendix A)? Applicants may obtain information from the NH Department of Resources and Economic Development Natural Heritage Bureau (NHB) website, www.nhnaturalheritage.org , specifically the book <u>Natural Community Systems of New Hampshire</u> .		
2.3 If wetland crossings are proposed, are they adequately designed to maintain hydrology, sediment transport & wildlife passage?		
2.4 Would the project remove part or all of a riparian buffer? (Riparian buffers are lands adjacent to streams where vegetation is strongly influenced by the presence of water. They are often thin lines of vegetation containing native grasses, flowers, shrubs and/or trees that line the stream banks. They are also called vegetated buffer zones.)		
2.5 The overall project site is more than 40 acres.		
2.6 What is the size of the existing impervious surface area?		
2.7 What is the size of the proposed impervious surface area?		
2.8 What is the % of the impervious area (new and existing) to the overall project site?		
3. Wildlife	Yes	No
3.1 Has the NHB determined that there are known occurrences of rare species, exemplary natural communities, Federal and State threatened and endangered species and habitat, in the vicinity of the proposed project? (All projects require a NHB determination.)		
3.2 Would work occur in any area identified as either "Highest Ranked Habitat in N.H." or "Highest Ranked Habitat in Ecological Region"? (These areas are colored magenta and green, respectively, on NH Fish and Game's map, "2010 Highest Ranked Wildlife Habitat by Ecological Condition.") Map information can be found at: <ul style="list-style-type: none"> ◦ PDF: www.wildlife.state.nh.us/Wildlife/Plan/highest_ranking_habitat.htm. ◦ Data Mapper: www.granit.unh.edu. ◦ GIS: www.granit.unh.edu/data/downloadfreedata/category/databycategory.html. 		
3.3 Would the project impact more than 20 acres of an undeveloped land block (upland, wetland/waterway) on the entire project site and/or on an adjoining property(s)?		
3.4 Does the project propose more than a 10-lot residential subdivision, or a commercial or industrial development?		
3.5 Are stream crossings designed in accordance with the PGP, GC 21?		

4. Flooding/Floodplain Values	Yes	No
4.1 Is the proposed project within the 100-year floodplain of an adjacent river or stream?		
4.2 If 4.1 is yes, will compensatory flood storage be provided if the project results in a loss of flood storage?		
5. Historic/Archaeological Resources		
If a minor or major impact project, has a copy of the Request for Project Review (RPR) Form (www.nh.gov/nhdhr/review) been sent to the NH Division of Historical Resources as required on Page 5 of the PGP?		

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

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

CONNECTICUT RIVER AND TRIBUTARIES

Ashuelot River
Sprague Brook
Liscomb Brook
Ash Swamp Brook
The Gulf
Hubbard Brook
Governors Brook
Ox Brook
Partridge Brook
Mill Brook
Great Brook
Cobb Brook
Cold River
Hackett Brook
Benware Brook
Beaver Brook

Little Sugar River
Smith Brook
Gully Brook
Sugar River
Walker Brook
Beaver Brook
Bloods Brook
Mascoma River
Mink Brook
Coleman Brook
Slade Brook
Petes Brook
Hewes Brook
Grant Brook
Eastman Brook
Oliverian Brook

Clark Brook
Ammonoosuc River
Burton Brook
Bendell Brook
Hunt Mountain Brook
Roaring Brook
Scarritt Brook
Carter Brook
Bill Little Brook
Conmary Brook
Smarts Mill Brook
Roaring Brook
Kimball Brook
Lyman Brook
Sweatt Brook
Cone Brook

Cow Brook
Carpenters Brook
Johns River
Isreal River
Roaring Brook
Moore Brook
Ames Brook
Potter Brook
Upper Ammonoosuc River
Simms Stream
Mohawk River
Beaver Brook
Dyer Brook
Arlin Brook

MERRIMACK RIVER AND TRIBUTARIES

Second Brook
Nashua River
Chase Brook
Nesenkeag Brook
Horseshoe Pond -
Naticook Brook
Souhegan River
Riddle Brook
Sawmill Brook
Watts Brook
Pointer Club Brook
Little Cohas Brook
Cohas Brook
Chandler Brook

Bowman Brook
Baker Brook
Ray Brook
Piscataquog River
South Branch River
Penacook Lake
Hayward Brook
Contoocook River
Cold Brook
Tannery Brook
Burnham Brook
Messer Brook
Millstone Brook
Dalton Brook

Brickyard Brook
Browns Brook
Suncook River
Bow Bog Brook
Bow Brook
Soucook River
Bryant Brook
Glines Brook
Stirrup Iron Brook
Allen Brook
Cross Brook
Punch Brook
Shaw Brook
Winnepesaukee River

Cate Brook
Giles Pond - Salmon
Brook
Weeks Brook
Bennett Brook
Knox Brook
Needle Shop Brook
Pemigewasset River
Turkey River
Bradleys Island
Horseshoe Island
Woods Brook

ANDROSCOGGIN RIVER AND TRIBUTARIES

Conner Brook
Austin Mill Brook
Gates Brook
Clement Brook
East Brook
Peabody Brook
Leadmine Brook
Rattle River
Josh Brook

Kidder Brook
Pea Brook
Stony Brook
Moose Brook
Perkins Brook
Moose River
Tinker Brook
Cascade Alpine Brook
Dead River

Bean Brook
Horne Brook
Stearns Brook
Leavitt Stream
Chickwolnepy Stream
Island Brook
Goose Pond
Sessions Brook
Bog Brook

Bear Brook
Moose Pond
Munn Pond
Smoky Camp Brook
Mollidgewock Brook
Clear Stream
Umbagog Lake

SACO RIVER AND TRIBUTARIES

Swift River
Mason Brook
Artist Brook
Kearsage Brook
Lucy Brook
Conway Lake
Echo Lake

E.Branch Saco River
Ellis River
Rocky Branch
Mountain Brook
Meadow Brook
Barlett Brook
Razor Brook

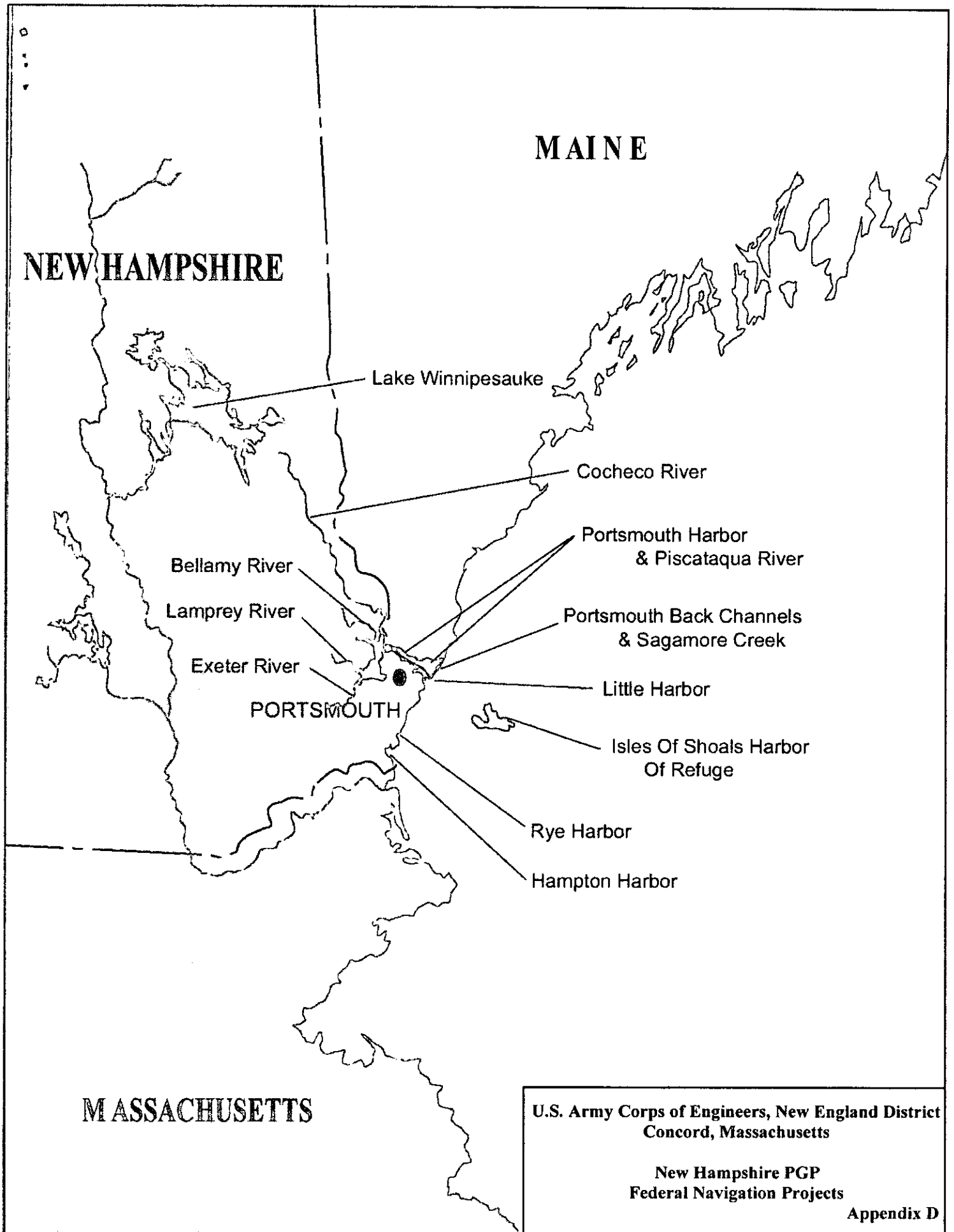
Albany Brook
Sawyer River
Nancy Brook
Sleepers Brook
Davis Brook
Benis Brook
Avalanche Brook

Kendron Brook
Willey Brook
Flume Cascade
Ossipee River
Beech River
Bearcamp River

COCHECO RIVER

LAMPREY RIVER

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



NEW HAMPSHIRE

MAINE

Lake Winnepesaukee

Cochecho River

Portsmouth Harbor
& Piscataqua River

Portsmouth Back Channels
& Sagamore Creek

Little Harbor

Isles Of Shoals Harbor
Of Refuge

Rye Harbor

Hampton Harbor

Bellamy River

Lamprey River

Exeter River

PORTSMOUTH

MASSACHUSETTS

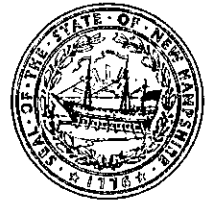
**U.S. Army Corps of Engineers, New England District
Concord, Massachusetts**

**New Hampshire PGP
Federal Navigation Projects**

Appendix D



The State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES



Thomas S. Burack, Commissioner

April 7, 2011

The Honorable Jim B. Rausch, Chairman
Transportation Committee
Legislative Office Building, Room 103
Concord, New Hampshire 03301

Re: HB 621, relative to the authority of the Department of Transportation

Dear Chairman Rausch:

Thank you for the opportunity to comment on HB 621, which would provide for an excavation and dredging permit by notification for applicants proposing to construct and maintain structures in jurisdictional streams and wetlands. The Department of Environmental Services (DES) supports this bill as amended by the House.

Thank you for this opportunity to comment. Please call Collis Adams at 271-4054, or me at 271-2958, if you have any questions or need additional information.

Very truly yours,

Thomas S. Burack

cc: Representatives Hill, Coffey, Kreis, Chandler, Keane and Foose
Senator Bradley

Good Morning Mr. Chairman and Committee, My name is Greg Hill and I represent Merrimack # 6 which is the towns of Andover Salisbury, Canterbury, Boscawen, Loudon, and Northfield. By trade, I am a Financial Advisor, so I deal generally with Annuities and Pensions and 401k's. I have 2 advanced degree designations in Financial Planning. I AM NOT an engineer, nor an environmental scientist. My town, Northfield asked me to review these new rules because they had a situation with a culvert and the cost had literally exploded. From \$ 15,000 to \$ 89,000. Numbers like that, get my attention. I have since heard from no fewer than 15 towns and road agents who have had a huge problem with the downshifted costs.

I think the House Committee made this a much better bill than what I originally submitted. The study committee to research the issue of STATUTORY AUTHORITY and CONSTUTIONALITY is a very good idea. I look forward to that process.

I took it upon myself to review the process by which these rules were put into place just last year. I read the JLCAR testimony from cover to cover. From the testimony I read, it appeared to me that the rules were written as if EVERY TOWN and INDIVIDUAL had a personal disregard for their own environment. Here is a direct quote from that testimony... A DES attorney is speaking..... She says "I don't think it is debateable, ..., that municipalities and other political subdivisions have an unfettered right to trash the environment." Continuing, she then spoke about the 28-a or unfunded mandate issue. DIRECT QUOTE she said, "They might not like the possibility of having to spend a little more money up front and if you think that really is a violation of Article 28-a, then you will vote accordingly, but I think you have to balance that against what the rules do, what the rules have been modified to accommodate and then make your decision." My belief is that the Constitution of our state does NOT make accomodation for "good works".

Also in that JLCAR testimony, it was pointed out the DES commissioner conceded the 28-a issue when he said, "The proposed rules are likely to increase the cost of installing new stream crossings and replacing at least some existing stream crossings."

I think it's obvious that these rules were written without regard for the cost to be borne by the town or individual. You can read, in testimony, just how arbitrary was the input into creating these Tier 1, 2 and 3. It does not come

from any Army Corp Engineer. It was just modified at the last hearing from 36 inches to 48 with a stroke of a pen. Simple.

The Army Corp is perfectly happy with the arrangement of the DES administering the Federal Army Corp rules called the Programmatic General Permit or PGP and why not? NH is, in essence, paying the costs of administering Federal rules. That is a problem for many of us in the House. The DES, on their own however, e-x-p-a-n-d-e-d on those rules to include Streamcrossing. The Army Corp has no problem with that expansion. I think it is a very good idea for the Legislature to decide if the DES has that authority.

Two last items I hope you consider, ONE is the unanswerable question of the number of private construction development projects that did not proceed this past year when faced with the significant increased costs imposed by the DES Streamcrossing Rules. I believe Gary Abbott will speak to that so I will simply ask that you pay particular attention to his testimony today and TWO is the added costs to our own state budget from Streamcrossing. It's a mistake to believe that streamcrossing rules only affect municipalities and developers. You should ask DOT what additional costs had to be added to their budget as it relates to these Streamcrossings. It's a huge number and it makes them very nervous about the future. Also, you should ask DES how their own budget was affected when they took on added personnel to effect these new rules. I would not trust the answer however. And with that I will close my testimony. I urge passage of this bill AS IS.

Thank you.

RESPONSES TO
HOUSE FINANCE COMMITTEE
FROM
DEPARTMENT OF TRANSPORTATION

2/8/11

DOT expenses relative to solid/ hazardous waste:

1. There is a DES requirement taken from Title XV, Section B of the Energy Policy Act of 2005 – section 1530 of the Act requires all States receiving funds under Subtitle I to meet certain requirements. NHDES is requiring replacement of all single walled tanks and their appurtenances by 2015, with secondary containment.
2. DOT is moving forward with replacing all x automated fuel sites (y sites have been rebuilt at a cost of \$7.8 million, and 11 sites remain to be rebuilt at a cost of \$4.5 million), and also proposes to rebuild 42 manual fuel sites for \$7.3 million, 29 heating oil tank sites for \$0.6 million, and 3 Mechanical Services tanks for \$62,000. The rebuilding of these last three categories has not begun as yet, but is proposed for 2012 through 2015.
3. All DOT sites cost \$300,000 - \$500,000 annually - through both Federal and State funding sources – for monitoring and remediation.
4. Inspections on State-owned facilities and equipment (above ground, and underground storage tanks primarily) cost approximately \$100,000 annually (all State funds).

What is the cost of the new stream cross guidelines?

Implementing the stream crossing rules require making drainage structures more environmentally friendly. DOT has been able to phase in the implementation of the requirements since their passage in May 2010. To date, there are two existing culverts that would need to be replaced as bridges with a greater construction cost. An additional larger bridge crossing currently under design will not incur additional construction costs due to these new rules. It is anticipated 40 to 45 evaluations will be required in a typical year. Several cost estimates for stream crossing permits are outlined below:

Design Item	DESIGN	
	Pre-Stream Crossing Rule Costs (\$30/hr)	Current Costs (\$30/hr)
Environmental field work	\$ 60	\$ 240
Report preparation	\$ 60	\$ 240
Design/ permit application	\$1,500	\$3,750
Total (pre-construction)	\$1,620	\$4,230

CONSTRUCTION

Construction costs can vary greatly depending upon the design selected. The stream crossing rules include a section, which allows alternative designs, which are a direct result of the stakeholders recognizing the need to maintain the infrastructure that is already in place in a cost-effective manner. The costs/numbers below are provided for general information and do not represent actual construction costs.

SAMPLE

Replacing a Tier 3 crossing, which requires compliance with the most stringent aspects of the stream crossing rules, could (from a hydraulics perspective) be replaced with any of the 3 designs below:

Replace Existing 66" Dia. CMP in Stratham with a:

1. 8' H X 7' W X 42' L precast box, embedded 1': \$289,000 (non-compliant)
 2. 96" X 40 L HDPE pipe, embedded 30": \$171,000 (non-compliant)
 3. 40' bridge: \$620,000 (compliant)
-

SAMPLE

There are examples where a compliant design would be the same as a design DOT would have proposed before passage of the stream crossing rules. Replacing a Tier 2 crossing can be done in-kind, when there is no history of flooding.

Replace Existing 3' X 6' concrete box culvert with a 3' X 8' box culvert (embedded 1'). No cost is available for this design, however there are no differences in cost for implementation of the stream crossing rules.

Is there any way to reduce the permitting process for DES requirements?

1. *Exempt any man made wetland from DES jurisdiction* (this is currently a House Bill). This exemption would likely reduce staff time and filing fees.
2. *Expand activities allowed under Notification of Routine Roadway Maintenance.* Allowing other activities in addition to the five that currently qualify as Routine Roadway Maintenance would decrease the number of Dredge & Fill permits that DOT would need to apply for, which would reduce staff time and filing fees. DES is supportive of adding additional maintenance activities. Notification of

Routine Roadway Maintenance requires no filing fee and work can be done five days after the Notification is sent to DES. Ideas for additional activities include placing staging in the water, installation of cofferdams, installation of concrete facing up to 1 foot, dredge inlets/outlets of all pipes (currently limited to 36" or smaller), and maintenance or replacement of twin pipes (currently limited to single pipes).

3. *Remove the Designated River and Prime Wetland buffer kick-outs from Notification of Routine Roadway Maintenance.* Currently, Notification of Routine Roadway Maintenance cannot be used within a ¼ mile of a Designated River or within 100 feet of a Prime Wetland. In these situations, a Standard Dredge & Fill permit is required for the maintenance activity, which takes more staff time to process, a filing fee of at least \$200, and a longer wait to receive a permit from DES. Preliminary indication is that DES is supportive of this.
4. *Remove Designated Rivers as a factor in determining Tier of stream crossings.* Currently, any stream crossing within a ¼ mile of a Designated River, regardless of watershed size, is considered a Tier 3 crossing. This affects a substantial number of culverts that require a stream assessment that otherwise would not need an assessment, and results in a more stringent permitting process. There are currently 16 Designated Rivers and six more are under Legislative review.
5. *Exempt public road projects from the Shoreland permitting process.* DOT can rarely comply with the rules as written, does not pay a filing fee when applications are submitted, and the process takes a great deal of staff time to create and submit applications and plans simply to go through the motions and get a permit. An alternative to the Shoreland permit could be the creation of a Memorandum of Agreement that commits DOT to reducing shoreland impacts wherever practicable.
6. *Consider giving permitting authority to DOT for minimum impact projects.* Establish a protocol that would allow DOT to issue its own permits for projects that are classified as minimum impact, or less, per DES rules.
7. *Incorporate the monthly Natural Resource Agency Coordination Meetings into the formal permitting process.* DOT holds a coordination meeting every month at which proposed projects are discussed with State and Federal agencies, including DES, NH Fish & Game, NH Natural Heritage Bureau, US Army Corps of Engineers, US EPA, and US Fish & Wildlife Service. These meetings provide a valuable opportunity for input on proposed projects early in the design process prior to submittal of permit applications. Information presented at these meetings is often the same information that is included in a Standard Dredge & Fill application package submitted to DES. If this coordination meeting was written into rule as a requirement for permitting for DOT projects with minimal and routine impacts, then several components of the application package could be eliminated and permitting could be streamlined.

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

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

21. Waterway/Wetland Work and Crossings

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22. Water Pollution Prevention and Control. Construction or operation of any activity involving a discharge into a water of the U.S. authorized under this PGP shall be consistent with applicable water quality standards, effluent limitations, standards of performance, prohibitions, and pretreatment standards and management practices established pursuant to the CWA (33 USC 1251), and applicable State and local laws. If applicable water quality standards, limitations, etc., are revised or modified during the term of this permit, the authorized work shall be modified to conform to these standards within six months of the effective date of such revision or modification, or within a longer period of time deemed reasonable by the Corps in consultation with the EPA. Any activity involving a discharge of pollutants shall be constructed and operated so that the activity results in no additional discharge of relevant pollutants to impaired waters. Projects will be reviewed to determine if a project may result in a discharge of a relevant pollutant to an impaired water. Any project which may result in a discharge of a relevant pollutant into an impaired water will necessitate a higher-level review. Unless otherwise notified by the NH DES, applicants may presume that the Section 401 WQC for this PGP constitutes the Section 401 WQC for their Section 404 activity, provided the terms and conditions of this PGP are met.

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

**U.S. Army Corps of Engineers
Programmatic General Permit (PGP)**

Appendix B

**Corps Secondary Impacts Checklist
(for inland wetland/waterway fill projects in New Hampshire)**

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

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

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

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

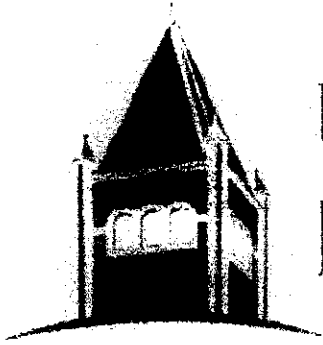
U.S. Army Corps of Engineers
New Hampshire Programmatic General Permit (PGP)
Appendix B - Corps Secondary Impacts Checklist
(for inland wetland/waterway fill projects in New Hampshire)

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

1. Impaired Waters	Yes	No
1.1 Will any work occur within 1 mile upstream in the watershed of an impaired water? See http://des.nh.gov/organization/divisions/water/wmb/section401/impaired_waters.htm to determine if there is an impaired water in the vicinity of your work area.*		
2. Wetlands	Yes	No
2.1 Are there are streams, brooks, rivers, ponds, or lakes within 200 feet of any proposed work?		
2.2 Are there proposed impacts to SAS, shellfish beds, special wetlands and vernal pools (see PGP, GC 26 and Appendix A)? Applicants may obtain information from the NH Department of Resources and Economic Development Natural Heritage Bureau (NHB) website, www.nhnaturalheritage.org , specifically the book <u>Natural Community Systems of New Hampshire</u> .		
2.3 If wetland crossings are proposed, are they adequately designed to maintain hydrology, sediment transport & wildlife passage?		
2.4 Would the project remove part or all of a riparian buffer? (Riparian buffers are lands adjacent to streams where vegetation is strongly influenced by the presence of water. They are often thin lines of vegetation containing native grasses, flowers, shrubs and/or trees that line the stream banks. They are also called vegetated buffer zones.)		
2.5 The overall project site is more than 40 acres.		
2.6 What is the size of the existing impervious surface area?		
2.7 What is the size of the proposed impervious surface area?		
2.8 What is the % of the impervious area (new and existing) to the overall project site?		
3. Wildlife	Yes	No
3.1 Has the NHB determined that there are known occurrences of rare species, exemplary natural communities, Federal and State threatened and endangered species and habitat, in the vicinity of the proposed project? (All projects require a NHB determination.)		
3.2 Would work occur in any area identified as either "Highest Ranked Habitat in N.H." or "Highest Ranked Habitat in Ecological Region"? (These areas are colored magenta and green, respectively, on NH Fish and Game's map, "2010 Highest Ranked Wildlife Habitat by Ecological Condition.") Map information can be found at: <ul style="list-style-type: none"> • PDF: www.wildlife.state.nh.us/Wildlife/Wildlife_Plan/highest_ranking_habitat.htm • Data Mapper: www.granit.unh.edu • GIS: www.granit.unh.edu/data/downloadfreedata/category/databycategory.html 		
3.3 Would the project impact more than 20 acres of an undeveloped land block (upland, wetland/waterway) on the entire project site and/or on an adjoining property(s)?		
3.4 Does the project propose more than a 10-lot residential subdivision, or a commercial or industrial development?		
3.5 Are stream crossings designed in accordance with the PGP, GC 21?		

4. Flooding/Floodplain Values	Yes	No
4.1 Is the proposed project within the 100-year floodplain of an adjacent river or stream?		
4.2 If 4.1 is yes, will compensatory flood storage be provided if the project results in a loss of flood storage?		
5. Historic/Archaeological Resources		
If a minor or major impact project, has a copy of the Request for Project Review (RPR) Form (www.nh.gov/nhdhr/review) been sent to the NH Division of Historical Resources as required on Page 5 of the PGP?		

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



UNIVERSITY *of* NEW HAMPSHIRE

New Hampshire Stream Crossing Guidelines
May 2009

Excerpts From UNH Stream Crossing Guidelines

III. Guidelines for New Stream Crossings (page 10)

One approach to setting design guidelines for stream crossings that will facilitate aquatic organism passage is to provide a general numerical standard that will work in most cases. The advantage of this approach is that it is relatively easy to communicate and apply. The disadvantage of a general standard approach is that it does not take into account the specific conditions, including stream stability, at the site of the proposed crossing.

General Considerations – Culverts **typically** should be no less than 6 feet and no more than 16 feet in diameter. Six feet is the minimum width needed to properly construct stream simulation; the inside of culverts smaller than this are too small to access and construct the streambed. (**page 14**)

IV. Guidelines for Stream Crossing Structure Replacement (pages 28-30)

a) **General Considerations** – Replacement crossing structures should follow the design guidelines for new stream crossing structures (see Design Guidelines for New Stream Crossings section).

Notice Number 2009-108 Rule Number Env-Wt 303, 304, 501, 506, 801, 803, 804 - various sections and paragraphs

<p>1. Agency Name & Address:</p> <p>Department of Environmental Services 29 Hazen Drive P.O. Box 95 Concord, NH 03302-0095</p>	<p>2. RSA Authority: <u>RSA 482-A:11</u></p> <p>3. Federal Authority: <u>N/A</u></p> <p>4. Type of Action:</p> <p>Adoption _____</p> <p>Amendment <u>X</u></p> <p>Repeal _____</p> <p>Readoption _____</p> <p>Readoption w/amendment <u>X</u></p>
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5. Short Title: Amendments relative to Stream Crossings

6. (a) Summary of what the rule says and the effect of the rule on those regulated:

The existing wetlands rules, Env-Wt 100-800, contain various provisions relative to stream crossings that are general and not compiled in a way that makes them easily accessible. The proposed amendments and new rules would strengthen -- and make more specific -- the criteria for design and approval of stream crossings. The proposed rules result from the stakeholders workgroup created to address stream crossing issues. Through a related rulemaking, the Department proposes to adopt Chapter Env-Wt 900 to complement the changes proposed in this rulemaking. The specific changes proposed in this rulemaking are explained below:

The introductory language of Env-Wt 303.02 is being amended grammatically, and new paragraph (p) is being added to cross-reference new tier 3 major projects (ref. Env-Wt 904.04).

The introductory language of Env-Wt 303.03 is being amended grammatically, new paragraph (n) is being added to account for projects in public rights-of-way that include new stream crossings, and new paragraph (o) is being added to cross-reference new tier 2 minor projects (ref. Env-Wt 904.03).

The introductory language of Env-Wt 303.04 is being amended to clarify that projects meeting the criteria of Env-Wt 303.02 or Env-Wt 303.03 are excluded; paragraphs (g), (i), (j), (n), (x)-(z), and (ae) are being amended generally for clarity and to reduce the criterion relative to stream channel width for minimum impact projects from 10 feet to 5 feet; paragraph (h) is being amended to replace language re: minimum impact bridge projects with a cross-reference to new tier one major projects (ref. Env-Wt 904.02); and paragraph (ag) is being added to create expedited process for replacement stream crossings that access single-family residences/ building lots or property for noncommercial recreational uses if the contributing watershed is 20 acres or less.

The introductory language of Env-Wt 303.05 is being amended for clarity, the introductory language of paragraph (a) is being amended to exclude stream crossings, and paragraph (f) is being amended for clarity.

Env-Wt 304.07 is being amended for clarity.

Env-Wt 501.02 relative to application requirements is being amended to add a new paragraph (c) to cross-reference additional application requirements for stream crossings that are specified in (new) Env-Wt 900. The permit by notification (PBN) established by Env-Wt 506.01(a)(8) for stream crossings for single-family residences and noncommercial recreational uses is being amended to exclude new stream crossings, to use the same terminology as is used in new Env-Wt 900, and to specify a maximum contributing watershed of 20 acres. In the same section, new paragraph (c) is being added to explicitly exclude subdivisions from the permit-by-notification process.

Env-Wt 506.04(c) is being amended to specify a maximum contributing watershed of 20 acres.

NN 2009-108 Continued*(Item 6.(a) cont.)*

Env-Wt 801.01, Env-Wt 801.03, Env-Wt 803.01, Env-Wt 803.03, Env-Wt 803.05, and Env-Wt 804.02 relative to compensatory mitigation are being amended to distinguish between stream crossing projects and other kinds of projects. Env-Wt 801.03 also is being amended to reflect pending legislation relative to expanding the eligibility for paying a fee in lieu of permittee-responsible mitigation.

The proposed rules benefit the regulated community by making the state and federal process consistent. The proposed rules benefit the environment by requiring stream crossings to allow for passage and to accommodate for flooding events. This will help fish and amphibians as well as water flow and sedimentation. The proposed rules benefit the public by ensuring that crossings can handle stream flows for 25-year or 100-year floods (depending on the size of the watershed, *etc.*) which should mitigate some flooding events. These rules adopt recommendations made by the Legislative Flood Study Commission by establishing criteria relating to flood events and requiring mitigation for impacts in 100 year flood plains. Additionally, with the anticipated passage of legislation (SB 65) to establish an In Lieu Fee Stream Mitigation Fund, these rules will provide the threshold and framework for future work on this issue.

6. (b) Brief description of the groups affected:

Any individual or entity, including state agencies, political subdivisions, and private developers, that needs or wishes to construct or maintain a stream crossing may be affected by the proposed rules.

6. (c) Specific section or sections of state statute or federal statute or regulation which the rule is intended to implement:

Rule Section(s)	Statute(s) Implemented
Env-Wt 303.02 intro & new (p); Env-Wt 303.03 intro, new (n) & (o); Env-Wt 303.04 intro, (g)-(j), (n), (x), (y), (z), (æ) & new (ag); Env-Wt 303.05 intro, (a) intro & (f); Env-Wt 304.07	RSA 482-A:1 & 3; RSA 482-A:11
Env-Wt 501.02 new (e); Env-Wt 506.01(a)(8) & (c); Env-Wt 506.04(c)	RSA 482-A:1 & 3; RSA 482-A:11
Env-Wt 801.01; Env-Wt 801.03; Env-Wt 803.01(a) intro, new (b), & (c) intro; Env-Wt 803.03; Env-Wt 803.05; Env-Wt 804.02	RSA 482-A:3, I; RSA 482-A:11; RSA 482-A:28-33

7. Contact person for copies and questions including requests to accommodate persons with disabilities:

Name:	Karla McManus	Title:	Wetlands Rule Coordinator
Address:	Department of Environmental Services 29 Hazen Drive P.O. Box 95 Concord, NH 03302-0095	Phone #:	271-7514
		Fax#:	271-6588
		E-mail:	karla.mcmanus@des.nh.gov

The rules also can be viewed in PDF at

<http://des.nh.gov/organization/commissioner/legal/rulemaking/index.htm>

TTY/TDD Access: Relay NH 1-

800-735-2964 or dial 711 (in NH)

8. Deadline for submission of materials in writing or, if practicable for the agency, in the electronic format specified: 4:00 p.m. on Friday, September 18, 2009

NN 2009-108 Continued

9. Public hearings scheduled for:

- Date and Time: Tuesday, September 1, 2009, 10:30 a.m. to 12:30 p.m.
Place: Rooms 112, 113 & 114, DES Offices, 29 Hazen Drive, Concord, NH
- Date and Time: Thursday, September 3, 2009, 6:00 p.m. to 8:00 p.m.
Place: Littleton Community House, 120 Main Street, Littleton, NH
- Date and Time: Tuesday, September 8, 2009, 6:00 p.m. to 8:00 p.m.
Place: Keene Public Library, Ruth Huntress Auditorium, 60 Winter Street, Keene, NH

10. Fiscal Impact Statement (Prepared by Legislative Budget Assistant)

FIS # 09:113, dated 07/15/09

1. Comparison of the costs of the proposed rule(s) to the existing rule(s):

When compared to the existing rules, the proposed rules may have an indeterminable impact on costs to political subdivisions and independently owned businesses to the extent they install or replace a stream crossing.

2. Cite the Federal mandate. Identify the impact on state funds:

No federal mandate, no impact on state funds. The proposed rules will align New Hampshire requirements with federal requirements under the State Programmatic General Permit issued by the US Army Corps that require construction projects provide for aquatic organism passage. The aligning of New Hampshire requirements to the federal requirements may result in a decrease in costs as applicants will not have to meet two separate sets of standards.

3. Cost and benefits of the proposed rule(s):**A. To State general or State special funds:**

None.

B. To State citizens and political subdivisions:

To the extent a political subdivision installs or replaces a stream crossing and does not already design for the passage of aquatic organisms and anticipated flows, especially during storm events, they may have increased costs. The alignment of NH requirements with the federal requirements may result in a decrease in costs as applicants will not have to meet two separate sets of standards. There is no impact on state citizens.

C. To independently owned businesses:

To the extent an independently owned business installs or replaces a stream crossing and does not already design for the passage of aquatic organisms and anticipated flows, especially during storm events, they may have increased costs. The alignment of NH requirements with the federal requirements may result in a decrease in costs as applicants will not have to meet two separate sets of standards.

11. Statement Relative to Part I, Article 28-a of the N.H. Constitution:

The rules do not create, modify, or expand any program in such a way as to require action by political subdivisions and so do not require any expenditures by political subdivisions. The rules thus do not violate Part I, Article 28-a of the N.H. Constitution.

Notice Number	2009-109	Rule Number	Env-Wt 900
1. Agency Name & Address:		2. RSA Authority:	RSA 482-A:11
Department of Environmental Services 29 Hazen Drive P.O. Box 95 Concord, NH 03302-0095		3. Federal Authority:	N/A
		4. Type of Action:	
		Adoption	<u> X </u>
		Amendment	<u> </u>
		Repeal	<u> </u>
		Readoption	<u> </u>
		Readoption w/amendment	<u> </u>
5. Short Title:		Stream Crossings	

6. (a) Summary of what the rule says and the effect of the rule on those regulated:

The existing wetlands rules, Env-Wt 100-800, contain various provisions relative to stream crossings that are general and not compiled in a way that makes them easily accessible. The proposed amendments and new rules would strengthen, and make more specific, the criteria for design and approval of stream crossings. The proposed rules result from the stakeholders workgroup created to address stream crossing issues. In this rulemaking, the Department proposes to adopt Env-Wt 900 to complement the changes proposed in separate-but-related rulemakings for Env-Wt 100 (definitions) and various sections in Env-Wt 303, 500, and 800.

The new chapter, Env-Wt 900, supplements existing criteria in Env Wt 300 and Env Wt 400 relative to need, minimization, and avoidance and the assessment of the functions and values of wetlands and surface waters that may be impacted by any project. The chapter establishes three tiers of stream crossings based on watershed size and slope at the crossing, corresponding to minimum impact, minor, and major projects. The chapter identifies general stream crossing criteria and tier-specific design criteria for aquatic organism passage, erosion, flood flow, and watercourse connectivity. The rules also provide a mechanism for obtaining approval of alternate designs.

Activities which are exempt from Env-Wt 900 include routine roadway and railway maintenance, minimum impact forestry, minimum impact agriculture, and minimum impact trail activities. (A permit-by-notification is being created for small impact replacements of crossings for residential property, but the replacement must comply with the general design criteria.)

Tier one stream crossings are minimum impact projects. Two subcategories of tier one crossings will be established. For a single-family residential property or building lot and property used for noncommercial recreational purposes, the contributing watershed is >20 acres and ≤200 acres and the average stream approach channel slope is ≤7.5%. For all other properties, including single-family subdivisions, the contributing watershed is ≤200 acres and the average stream approach channel slope is ≤7.5%.

Tier 2 stream crossings are minor impact wetlands projects located where the contributing watershed is >200 acres and <640 acres and the average stream approach channel slope is >7.5% and <20%. These projects must meet the general criteria, the UNH stream crossings manual and specific design standards. Mitigation is required only if the rules cannot be met. A P.E. stamp is required for the plans, and the crossing must accommodate the 100-year frequency flood and cause no increases on flood stages on abutter land.

Tier 3 stream crossings are major impact wetlands projects located where the contributing watershed is ≥640 acres, the average stream approach channel slope is ≥20%, or certain special resources are present. Tier 3 crossings must meet the general criteria, the Stream Crossing Manual and specific design criteria. A P.E. stamp is required for the plans, and the crossing must accommodate the 100-year frequency flood and cause no increases on flood stages on abutter land. If the project is a tier 3 only because of the special resources, it can be lowered to tier 2 or tier one (as appropriate based on watershed size and channel slope) if the impacts to the special resources are specifically mitigated.

NN 2009-109 Continued*(Item 6.(a) cont.)*

The proposed rules benefit the public by making the state and federal process consistent. The proposed rules benefit the environment by requiring stream crossings to allow for aquatic organism passage and to accommodate flooding events. This will help fish and amphibians as well as water flow and sedimentation.

The regulated community will benefit from crossings that can accommodate stream flow for 25-year or 100-year floods (depending on the size of the watershed, etc.), which are expected to mitigate flood events. These rules adopt recommendations made by the Legislative Flood Study Commission by establishing criteria relating to flood events and requiring mitigation for impacts in 100-year flood plains. Additionally, with the anticipated passage of legislation (SB 65) to establish an In Lieu Fee Stream Mitigation Fund, these rules will provide the threshold and framework for future work on this issue.

6. (b) Brief description of the groups affected:

Any individual or entity, including state agencies, political subdivisions, and private developers, that needs or wishes to construct or maintain a stream crossing may be affected by the proposed rules.

6. (c) Specific section or sections of state statute or federal statute or regulation which the rule is intended to implement:

Rule Section(s)	Statute(s) Implemented
Env-Wt 900	RSA 482-A:1 & 3; RSA 482-A:11

7. Contact person for copies and questions including requests to accommodate persons with disabilities:

Name: Karla McManus Title: Wetlands Rule Coordinator
 Address: Department of Environmental Services Phone #: 271-7514
 29 Hazen Drive Fax#: 271-6588
 P.O. Box 95 Concord, NH 03302-0095 E-mail: karla.mcmanus@des.nh.gov

The rules also can be viewed in PDF at

<http://des.nh.gov/organization/commissioner/legal/rulemaking/index.htm>

TTY/TDD Access: Relay NH 1-800-735-2964 or dial 711 (in NH)

8. Deadline for submission of materials in writing or, if practicable for the agency, in the electronic format specified: 4:00 p.m. on Friday, September 18, 2009

 Fax E-mail Other format (specify):

9. Public hearings scheduled for:

Date and Time: Tuesday, September 1, 2009, 10:30 a.m. to 12:30 p.m.

Place: Rooms 112, 113 & 114, DES Offices, 29 Hazen Drive, Concord, NH

Date and Time: Thursday, September 3, 2009, 6:00 p.m. to 8:00 p.m.

Place: Littleton Community House, 120 Main Street, Littleton, NH

Date and Time: Tuesday, September 8, 2009, 6:00 p.m. to 8:00 p.m.

Place: Keene Public Library, Ruth Huntress Auditorium, 60 Winter Street, Keene, NH

NN 2009-109 Continued

10. Fiscal Impact Statement (Prepared by Legislative Budget Assistant)

FIS # 09:114 , dated 07/15/09**1. Comparison of the costs of the proposed rule(s) to the existing rule(s):**

When compared to the existing rules, the proposed rules may have an indeterminable impact on costs to political subdivisions and independently owned businesses to the extent they install or replace a stream crossing.

2. Cite the Federal mandate. Identify the impact on state funds:

No federal mandate, no impact on state funds. The proposed rules will align New Hampshire requirements with federal requirements which may result in a decrease in costs as applicants will not have to meet two separate sets of standards.

3. Cost and benefits of the proposed rule(s):**A. To State general or State special funds:**

None.

B. To State citizens and political subdivisions:

To the extent a political subdivision installs or replaces a stream crossing and does not already design for the passage of aquatic organisms and anticipated flows, especially during storm events, they may have increased costs. The alignment of NH requirements with the federal requirements may result in a decrease in costs as applicants will not have to meet two separate sets of standards. There is no impact on state citizens.

C. To independently owned businesses:

To the extent an independently owned business installs or replaces a stream crossing and does not already design for the passage of aquatic organisms and anticipated flows, especially during storm events, they may have increased costs. The alignment of NH requirements with the federal requirements may result in a decrease in costs as applicants will not have to meet two separate sets of standards.

11. Statement Relative to Part I, Article 28-a of the N.H. Constitution:

The rules do not create, modify, or expand any program in such a way as to require action by political subdivisions and so do not require any expenditures by political subdivisions. The rules thus do not violate Part I, Article 28-a of the N.H. Constitution.

Comment to FIS

The fiscal impact statement (FIS) indicates that the proposed rules may have an indeterminable impact on costs to political subdivisions and independently owned businesses, but that there is no impact to state citizens. However, the rulemaking notice describes that the groups that may be affected by the rule include any individual or entity that needs to construct or maintain a stream crossing. Similarly, Env-Wt 303.04(z), (ae), and (ag) all suggest that there may be financial consequences to private citizens contrary to the FIS as a result of the proposed rules.

Comment to Part 1, Art. 28-a Statement

This Statement may be incorrect. There may be a violation of Part 1, Article 28-a because the FIS indicates a fiscal impact on political subdivisions. Also, see conflict with RSA 541-A:25, which also prohibits unfunded state mandates on political subdivisions, even if the function is one the political subdivision may legally choose not to undertake.

Comment to FIS

The fiscal impact statement (FIS) indicates that the proposed rules may have an indeterminable impact on costs to political subdivisions and independently owned businesses, but that there is no impact to state citizens. However, the rulemaking notice describes that the groups that may be affected by the rule include any individual or entity that needs to construct or maintain a stream crossing. Similarly, Env-Wt 904.02(a)(1) suggests that there may be financial consequences to private citizens contrary to the FIS as a result of the proposed rules.

Comment to Part 1, Art.28-a Statement

This Statement may be incorrect. There may be a violation of Part 1, Art. 28-a because the FIS indicates a fiscal impact on political subdivisions. Also, see conflict with RSA 541-A:25, which also prohibits unfunded state mandates on political subdivisions, even if the function is one the political subdivisions may legally choose not to undertake,

APPENDIX

Rule Section(s)	Statute(s) Implemented
Env-Wt 900	RSA 482-A:1 & 3; RSA 482-A:11



State of New Hampshire

GENERAL COURT

CONCORD

J
Rec'd 11/8/11
✓

MEMORANDUM

DATE: November 1, 2011

TO: Honorable John H. Lynch, Governor
Honorable William L. O'Brien, Speaker of the House
Honorable Peter Bragdon, President of the Senate
Honorable Karen O. Wadsworth, House Clerk
Tammy L. Wright, Senate Clerk
Michael York, State Librarian

FROM: Representative J. Brandon Giuda, Chairman

SUBJECT: Final Report on HB 621, Chapter 114:3, Laws of 2011

Pursuant to HB 621, Chapter 114:3, Laws of 2011, enclosed please find the Final Report of the Committee to Study Certain Rules Adopted by the Department of Environmental Services Concerning Stream Crossings.

If you have any questions or comments regarding this report, please do not hesitate to contact me.

JBG/dm
Enclosure

cc. Committee Members

Final Report of the Committee to Study Certain Rules Adopted by the Department of
Environmental Services Concerning Stream Crossings
(HB 621-FN-LOCAL, Chapter 114:3, Laws of 2011
November 1, 2011

The Committee to Study Certain Rules Adopted by the Department of Environmental Services Concerning Stream Crossings ("Stream Crossing Rules") was tasked to determine whether the Stream Crossing Rules: (1) have statutory authority for their implementation and/or (2) violate Article 28-a of the New Hampshire Constitution.

The Committee found that the Stream Crossing Rules have statutory authority for their implementation primarily due to the very general rulemaking authority in the enabling legislation. Specifically, RSA 482-A:11 allows the commissioner to "adopt reasonable rules pursuant to the rulemaking provisions of RSA 541-1, to implement the purposes of this chapter."

Due to limited information presented in the public hearings, the Committee also decided that it had no option but to find that the Stream Crossing Rules do not violate Article 28-a of the New Hampshire Constitution.


Invoking the Constitutional prohibition of Article 28-a "requires both a mandate of responsibility to the political subdivision and a requirement of additional local political subdivision expenditures by virtue of the mandate." Opinion of the Justices (Voting Age in Primaries), 949 A.2d 670 (N.H. 2008); see also N. H. Mun. Trust Workers' Compensation Fund v. Flynn, 133 N.H. 17 (1990).

After reviewing how the Stream Crossing Rules were developed and analyzing the expanded requirements placed on municipalities, the Committee found that the Stream Crossing Rules as they pertain to Tier three crossings and above do expand the mandate to municipalities because, among other things, they significantly expand the responsibilities related to protecting wildlife.

With regard to the second prong of the analysis, namely whether the Stream Crossing Rules increase local political subdivision expenditures, the Committee was unable to verify whether the new mandates increased expenditures. Although the majority of Committee members felt that the Stream Crossing Rules did increase expenditures based on significant informal input outside the public hearings, Committee members were very frustrated, for they received, no formal testimony regarding increased costs at the hearings. Several Committee members were told by professionals that neither the professionals nor anyone else would testify against the Department of Environmental Services ("DES") for fear of retribution. Although DES was adamant that the fears were unfounded, the fear of retribution caused at least some professionals to forego the opportunity to testify. Because DES provided unrefuted testimony that the Rules did not increase costs, the Committee had no option but to find no Constitutional violation, despite the personal opinions held by the Committee members.

During the final Committee hearing, there was some discussion regarding the DES Oversight and Grievance Committee that is proposed in LSR 2419. The Committee feels that this proposal may warrant support in order to provide a neutral detached venue for complaints and suggestions involving DES.

Respectfully submitted,


J. Brandon Giuda, Chair

Committee Report

STATE OF NEW HAMPSHIRE
SENATE
REPORT OF THE COMMITTEE

Date: April 14, 2011

THE COMMITTEE ON Transportation
to which was referred House Bill 621-FN-L

AN ACT relative to the authority of the department of
 transportation.

Having considered the same, the committee recommends that the Bill:

OUGHT TO PASS

BY A VOTE OF: 3-0

AMENDMENT # s

Senator Jim Rausch
For the Committee

Danielle Barker 271-3091

New Hampshire General Court - Bill Status System

Docket of HB621

Docket Abbreviations

Bill Title: relative to the authority of the department of transportation.*Official Docket of HB621:*

Date	Body	Description
1/25/2011	H	Introduced 1/6/2011 and Referred to Public Works and Highways; HJ 11 , PG. 194
2/8/2011	H	Public Hearing: 2/24/2011 10:00 AM LOB 201
3/2/2011	H	==CANCELLED== Executive Session: 3/2/2011 LOB 201 Following House Session
3/3/2011	H	Subcommittee Work Session: 3/9/2011 12:00 PM LOB 201
3/3/2011	H	Executive Session: 3/9/2011 8:45 AM LOB 201 (If Necessary Continued 3/10/2011 8:45 AM LOB 201)
3/10/2011	H	Committee Report: Ought to Pass with Amendment #0130h for Mar 15 (Vote 15-0; CC); HC 22 , PG.539
3/10/2011	H	Proposed Committee Amendment #2011-0130h ; HC 23 , PG.652
3/15/2011	H	Removed from Consent Calendar (Rep Chandler); HJ 26 , PG.694
3/17/2011	H	Amendment #0130h Failed, VV; HJ 30 , PG.1032-1033
3/17/2011	H	Floor Amendment #2011-0878h (Rep McConkey) Adopted, VV; HJ 30 , PG.1033-1034
3/17/2011	H	Ought to Pass with Amendment #0878h: MA VV; HJ 30 , PG.1032-1034
3/23/2011	S	Introduced and Referred to Transportation; SJ 11 , Pg.194
3/31/2011	S	Hearing: 4/7/11, Room 103, LOB, 10:00 a.m.; SC18
4/14/2011	S	Committee Report: Ought to Pass, 4/20/11; SC20
4/20/2011	S	Ought to Pass, MA, VV; OT3rdg; SJ 13 , Pg.269
4/20/2011	S	Passed by Third Reading Resolution; SJ 13 , Pg.270
5/4/2011	S	Enrolled Bill Amendment #1560 Adopted; SJ 16 , Pg.317
5/4/2011	H	Enrolled Bill Amendment #2011-1560e Adopted; HJ 42 , PG.1491
5/4/2011	H	Enrolled; HJ 42 , PG.1492
5/11/2011	S	Enrolled; SJ 16
6/1/2011	H	Signed By Governor 05/31/2011; Effective 05/31/2011; Chapter 0114

NH House

NH Senate

Other Referrals

COMMITTEE REPORT FILE INVENTORY

ORIGINAL REFERRAL RE-REFERRAL

1. THIS INVENTORY IS TO BE SIGNED AND DATED BY THE COMMITTEE AIDE AND PLACED INSIDE THE FOLDER AS THE FIRST ITEM IN THE COMMITTEE FILE.
2. PLACE ALL DOCUMENTS IN THE FOLDER FOLLOWING THE INVENTORY IN THE ORDER LISTED.
3. THE DOCUMENTS WHICH HAVE AN "X" BESIDE THEM ARE CONFIRMED AS BEING IN THE FOLDER.
4. THE COMPLETED FILE IS THEN DELIVERED TO THE CALENDAR CLERK.

DOCKET (Submit only the latest docket found in Bill Status)

COMMITTEE REPORT

CALENDAR NOTICE

HEARING REPORT

HANDOUTS FROM THE PUBLIC HEARING

PREPARED TESTIMONY AND OTHER SUBMISSIONS

SIGN-UP SHEET(S)

ALL AMENDMENTS (passed or not) CONSIDERED BY COMMITTEE:

_____ - AMENDMENT # _____	_____ - AMENDMENT # _____
_____ - AMENDMENT # _____	_____ - AMENDMENT # _____

ALL AVAILABLE VERSIONS OF THE BILL:

_____ AS INTRODUCED	_____ AS AMENDED BY THE HOUSE
<input checked="" type="checkbox"/> FINAL VERSION	_____ AS AMENDED BY THE SENATE

_____ OTHER (Anything else deemed important but not listed above, such as amended fiscal notes): _____

IF YOU HAVE A RE-REFERRED BILL, YOU ARE GOING TO MAKE UP A DUPLICATE FILE FOLDER

DATE DELIVERED TO SENATE CLERK

1/21/11

Danielle Barker
BY COMMITTEE AIDE