



MMTA ENEWS BRIEF

From the Desk of Jamy B. Madeja, Esq.

617-227-8410; jmadeja@bucananassociates.com

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Proposed Army Corps Programmatic General Permit Changes

Comment Deadline: October 16, 2017

Please take a moment to email a comment to the U.S. Army Corps of Engineers in Concord, Massachusetts, about their proposed changes to the Programmatic General Permits currently in use for facilities located in Massachusetts. USACE proposes to replace all the state-wide General Permits with revised General Permits. Projects already using an existing General Permit remain authorized until the original expiration date of February 4, 2020. No reapplication is needed unless the project is modified. Key points and primary permit changes relevant to most MMTA members are summarized in the comment letter from MMTA below.

The link to the Army Corps' public notice can be found by visiting the below link and clicking on the attachment in the top right hand corner:

<http://www.nae.usace.army.mil/Missions/Regulatory/PublicNotices/Article/1313032/nae-2016-00599/>

If you can, please consider emailing your own comment

to: Gregory.r.penta@usace.army.mil.

You might state that “the effort at clarity for the proposed General Permit changes is much appreciated. The General Permits are still so hard to follow that much more education is needed to achieve widespread understanding.”

If you agree with MMTA that “low impact mooring technology” doesn’t work safely, please say that as well. One of the proposed changes is to require more intense federal review of moorings changes which are not using “low impact mooring technology.”

Call or email anytime to your MMTA with questions or concerns, either to Jmadeja@buchananassociates.com or to randall@boatma.com

DRAFT MMTA COMMENT to USACOE via Gregory.r.penta@usace.army.mil:

1.Format: The format of the permits is improved for clarity, with the proposed changes being well-summarized at the beginning. However, the proposed permits are still so terribly cumbersome and dense that nearly all applicants, especially small facilities or businesses, cannot be reasonably expected to understand what the Army Corps intends to regulate and what it does not intend to regulate, unless they hire a professional consultant in this specific field of regulation. The format changes are an improvement. Dramatic simplification is needed to be fair to the people the Corps intends to regulate, especially in such difficult budget times for the Corps when communication and education funds are so limited. More education would be terrific and we at the Mass Marine Trades Association would be very pleased to help, including by having a U.S. Army Corps representative come speak at our annual education conference on January 18, 2018.

2.Non-Tidal Special Aquatic Systems: Work in “mud flats” and other non-tidal Special Aquatic Systems such as vegetated shallows will not be able to “self-certify” to use the General Permits. This work will have to at best file a Pre-Construction Notice and at worst a full Individual Permit application. Given the robust nature of existing state laws, these changes add federal processing time for no additional environmental or navigational benefit and should not be implemented as proposed.

3.Temporary Fill: Beneficial changes proposed to allow temporary fill such as for construction matts. Time limits are imposed. Thank you.

4.Endangered Species: Some activities which might impact some endangered species would newly be self-verification eligible (northern long-eared bats, roseate terns, piping plovers and red knots). These are beneficial changes. Some work is now limited in critical habitat for Atlantic sturgeon, shortnose sturgeon and right whales. The work should be subject to closer review and scrutiny but not forbidden before the review even occurs. These changes seem appropriate given uniquely federal statutory authority.

5. Moorings, General Permit 2: It is excellent that authorized moorings can be maintained and replaced using the self-verification process. It is not excellent that this General Permit 2 change also carries forward an inaccurate assumption that “low impact mooring technology and/or helical anchors” are better for the marine environment or human navigational safety when all comments and studies from knowledgeable mooring operators indicates the opposite is true. The “rubber bands” moorings break dangerously easily, setting vessels loose to crash into property and other vessels and people and release substances into the environment where as traditional mooring chains are already safety regulated and confirmed to withstand heavy usage in challenging weather. The only studies done in Massachusetts waters were on lightly used transient moorings. Also, the “helix” moorings skewer huge holes into the ocean floor disturbing more area than traditional moorings, and they also rust or deteriorate in salt waters and require more frequent maintenance. The bias towards “low impact” moorings is not supported by fact and experience and is endorsed only by the manufacturers who have been lobbying the Marine Fisheries agencies for years. MMTA members have tried these moorings and had hoped they would be environmentally beneficial. They are not. MMTA has repeatedly requested participation in these discussions with the ACOE and repeatedly not been consulted. The results of the ‘bell jar’ effect of regulators talking with each other and not with the knowledgable users or regulated parties is showing in this unfortunate proposed draft about moorings.

6.Structures, General Permit 3: USACE proposes newly to require a minimum 1.5:1

height-to- width ratio in order for piers to be self-verification eligible. Respectfully, the height to width ratio seems the wrong measure of the environmental impacts of shading, especially based on a single experimental evaluation study in one estuary. The study and resulting proposal do not take into account that some species actually need and prefer shade and hiding places and nesting spots below decking. Higher exposure heights means higher species fatality risk from predators and exposure. Massachusetts already has strong wetlands (and salt marsh) protection laws to address possible impacts from any piers. Also, the USACE proposal by its own terms does not yet have well-supported science or facts behind it and is not ready for finalization, where it is not even discussed yet in the draft permit changes.

The proposed changes would also allow self-verification eligibility for reconfiguration of existing structures at existing authorized boating facilities or public recreational uses, so long as the structures do not extend beyond the existing perimeter of the facility or encroach into Special Aquatic Sites. Where Massachusetts already has a robust navigation protection system (Chapter 91 licensing) and well established environmental protections (the Wetlands Protection Act, among other laws), this proposal is efficient, protective of the environment and navigation and smartly allocates limited federal resources.

7.Dredging, General Permit 5: The proposed changes require a Pre-Construction Notice for dredging in right whale habitat. Where this is a federally endangered species, the proposal to require some federal review is appropriate. USACOE also proposes new outright limits for improvement dredging and new time of year restrictions. No scientific data is provided to support the new time of year restrictions which are absolutely project critical given the many years it takes to obtain dredging approvals and secure funding. The windows are always short and the available equipment extremely scarce. It would be very helpful to know if there is solid science behind the time of year restrictions or if they are based on extrapolation or assumptions not truly localized for the project areas in question. If the latter is the case, then a prohibition is in appropriate and a Pre-Construction Notice would be more applicable. Also, the changes seek to increase the availability of Pre Construction Notices instead of a full Individual Permit for less than an acre of impacts to Special Aquatic Sites. These changes are sensible. Intertidal areas should be included in this proposed changes, however, again because we already have a

very robust regulatory system at the state level and do not benefit from duplicative federal process on smaller projects.

8. Stream Crossings: USACOE is considering requiring all new or replacement stream crossings in non-tidal streams be spans to be eligible for self-verification. Respectfully, the absence of study and discussion indicates the imposition of these changes is not ready yet. Moreover, again, there is already robust individual project study and review at the state level such that further federal process is not beneficial.

9. Aquaculture, General Permit 22: Pre-Construction Notice newly required for certain aquaculture activities seems sensible.

10. Previously Authorized Activities: Deleted.

11. Pile Driving And Removal, General Condition 11: The proposed change is to require a Pre-Construction Notice for pile driving in certain endangered species areas. This change is appropriate if the species is federally endangered AND if regulated parties are more clearly told what the federal agencies are expecting regarding how one checks for endangered species areas. Too often, it has become an extremely difficult process only truly specialized consultants know about regarding which websites to consult to assure federal satisfaction. The same issue applies to all the endangered species areas meant to be checked prior to permit usage.

12. Soil Erosion and Sediment Control, General Condition 16: The changes add time of year restrictions without clear science to support the changes. Also, new conditions are added to reduce turbidity and sedimentation and protect fish passage and spawning and rearing habitat. It is not clear the proposed conditions are backed by science and fact in specific geographic areas. If they are, the changes are solid. If they aren't, the changes are not yet appropriate.

13. Vernal Pools, General Condition 23: Expectations are clarified, which is always helpful. However, the term "Federal jurisdictional boundaries" in relation to vernal pools is unclear. Vernal pools are not currently federally regulated, perhaps because they are

localized and highly transient in appearing and disappearing again.

14. Coral Reefs, General Condition 24: quite clear.

15. Stormwater Treatment or Detention Systems, General Condition 28: The intention of this proposed change may be to prevent new untreated discharges. However, the proposed change requires an Individual Permit for stormwater systems which are already heavily regulated by the U.S. Environmental Protection Agency, and several layers of state statutes and regulations. This is the ideal type of project for which to use a General Permit, not an Individual Permit, to encourage stormwater treatment rather than discourage work on stormwater systems.

16. Tide Gates, General Condition 29: As with the stormwater systems, why add another layer of mandatory detailed federal scrutiny instead of a Pre-Construction Notice so the Corps can decide if a project is actually beneficial to proceed more quickly?

17. Self-Verification Notification Form, Section V: The changes are clear. The form anticipates true understanding of the extremely detailed and self-referential General Permits. More education of the regulated parties would be really helpful. Coastal Zone Management Federal Consistency: It is beneficial that the USACOE is proposing that federal consistency review is not needed for self-verified activities. It is not beneficial for the USACOE to propose all Pre-Construction Notices also must go through federal consistency review. This is unnecessary and duplicative process. At minimum, PCN projects should be assumed not to need federal consistency review unless CZM actively states such a review is needed. As it is, any activity requiring a USACOE permit already requires state Wetlands Protection Act review and "Chapter 91" licensing, if not state MEPA review, also.

Thank you for the opportunity to comment and the effort which has clearly gone into attending to General Permit issues.

Cordially,

Paul Nowak
President, Massachusetts Marine Trades Association

cc: Randall Lyons, Executive Director
Jamy B. Madeja, Esq., Legal Counsel



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Massachusetts Marine Trades Association

PO BOX 325 - Foxboro, MA 02035

(774) 404-8005 * info@boatma.com * www.boatma.com

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