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February 3, 2023

Via Email: Katelyn.M.Rainville@usacr.mil

Ms. Katelyn M. Rainville
Regulatory Division
U.S. Army Corps of Engineers
696 Virginia Road
Concord, MA 01742-2751

RE: Proposed Revision and Reissuance of the Department of Army
Massachusetts General Permits

Dear Ms. Rainville:

Boston Harbor Now respectfully submits the following comments on the Department of the Army's [proposed revisions and reissuance](#) of the Massachusetts General Permits, pursuant to Section 404 of the Clean Water Act (Section 404) and Section 10 of the Rivers and Harbors Act of 1899 (Section 10). The New England District, U.S. Army Corps of Engineers (USACE) should be commended for more than two decades of tailoring and streamlining permitting activities within the Commonwealth through a series of Programmatic and General Permits pursuant to Section 404 and Section 10. These efforts have served both the general public and Massachusetts regulatory agencies well for many years.

Recognizing the need to adapt to the impacts of climate change, including rising sea levels and more frequent and severe storm events, Boston Harbor Now is committed to ensuring that our coastlines are prepared to meet present and future threats, adapting vulnerable coastal regions to climate change impacts while enhancing natural and built environments. Through our work as partners in the Stone Living Lab, we continue to work on the implementation of Nature-Based Approaches (NBAs) by providing research and crucial data for flood protection strategies and other climate resiliency measures.

Based on our recognition of the value of NBAs and the challenges in implementing them, Boston Harbor Now requests the USACE to modify a number of the proposed General Permits (GPs), by substantially increasing the proposed thresholds in several of the GPs to further streamline permitting and create incentives for municipalities to implement NBAs. In particular, NBAs and ecological restoration activities that enhance resiliency provide important co-benefits and require implementation at a faster pace and larger scale than have occurred in recent years. This is especially important for continued research being conducted by universities and other groups studying alternatives to traditional infrastructure as well as public and private projects hoping to implement shoreline adaptation measures with multiple benefits around the Commonwealth.



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Given the importance of this federal action, we are requesting that a public hearing be held to consider the “Proposed Revision and Reissuance of the Department of the Army Massachusetts General Permits.”

State and Federal Program Alignment

Boston Harbor Now believes that further streamlining permitting requirements pursuant to Section 404 and Section 10 is warranted given the regulatory review programs and safeguards that are in place within the Commonwealth’s state agencies, regulations, and programs, including but not limited to the Massachusetts Wetlands Protection Act (WPA), Massachusetts Coastal Zone Management (CZM), Massachusetts Public Waterfront Act (Chapter 91), Massachusetts Endangered Species Act (MESA), and Massachusetts Environmental Policy Act (MEPA). Massachusetts has a long history of being at the forefront of environmental protection programs, and we believe that with the existential threat of sea level rise and other climate change threats, promoting NBAs and streamlining federal permitting reviews, which are largely duplicative of state programs and requirements, will promote project development and implementation while reducing the timeframe for permitting and implementation by many months.

In November of 2022, the Biden-Harris Administration announced [Roadmap for Nature-Based Solutions to Fight Climate Change, Strengthen Communities, and Support Local Economies](#). Boston Harbor Now believes that increasing review thresholds for several of the GPs to promote NBAs and related research are consistent with this report. It is particularly important to note that the Executive Summary and two of the five recommendations are consistent with promoting NBAs and research—both Recommendation 1. Update Policies and Recommendation 5. Prioritize Research, Innovation, Knowledge, and Adaptive Learning. The USACE is a critical partner and driving force behind many of the planning and feasibility studies that are occurring throughout the country as the federal government, states and tribes grapple with climate preparedness and resilience. The Army Corps’ *Climate Adaptation Plan 2022 Progress Report* also highlights several ongoing efforts and initiatives consistent with Boston Harbor Now’s request, including Modernize USACE Programs and Policies to Support Climate Resilient Investments; Enable State, Local, and Tribal Government Preparedness; and Provide Actionable Climate Information, Tools, and Projections.

The Challenges to Implementation

In general, the proposed thresholds for reporting requirements and individual permit requirements are too low, especially given the variety of reviews and requirements that occur at the local and state level. Boston Harbor Now recommends that the USACE significantly revise the GP review thresholds in this region to align them with Nationwide Permits (NWP) that are more broadly in use throughout the country. This would allow the USACE to raise review thresholds limits and, consistent with findings in other state and tribal



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jurisdictions, ensure that revised GPs have minimal individual and cumulative adverse environmental effects.

We further recommend that USACE establish two categories: Self-Verification (SV) with notice to the USACE and Individual Permits. We also recommend eliminating the Pre-Construction Notification category, which requires written authorization from the USACE, or require pre-construction notification, and the USACE requirement to affirmatively respond. An alternative would be to allow all NBAs to be Self-Verification, if below a threshold. An example of this use would be to allow an experimental cobble berm to be constructed below mean high water pursuant to SV, which may convert rocky intertidal or mud flat to a different habitat type.

Specific Massachusetts General Permit Suggestions

GP 2 - Maintenance: Revise the proposed threshold from $\leq 1,000$ SF to $\leq 5,000$ SF in mudflats and rocky intertidal habitat. Specifically allow retrofit of an existing seawall during repair/maintenance to incorporate a living seawall. Consider revising thresholds to be consistent with maintenance NWP in other jurisdictions (NWP #3).

GP 7 - Dredging: Raise new dredging threshold from $> \frac{1}{2}$ acre to > 1 acre, from $\geq 10,000$ CY to $\geq 20,000$ CY; and raise threshold of boulder relocation from $\leq 1,000$ SF to $\leq 5,000$ SF.

GP 9 - Shoreline stabilization: Raise thresholds for NBAs from ≤ 200 feet in length to ≤ 500 feet in length, and permanent impacts from 5,000 SF to less than half an acre.

GP 10 - Aquatic Habitat Restoration, Enhancement and Establishment Activities: The proposed thresholds are inadequate to accomplish restoration and enhancement activities of any scale. Revise the SV threshold from $\leq 5,000$ SF to < 1 acre and from $> 5,000$ SF to up to 5 acres for pre-construction notice.

GP 15 - Survey Activities: Consider revising SV threshold from $\leq 5,000$ linear feet in tidal, and $\leq 1,000$ linear feet in mudflats to $\leq 10,000$ SF.

GP 20 - Living Shorelines: Raise the SV threshold from ≤ 100 LF to 500 LF, and from $\leq 5,000$ SF to half an acre for impacts in tidal waters, and do not exclude rocky inter-tidal and mud flats, as in highly developed and urbanized areas space above mean high water will be very limited for living seawalls and NBAs. It is advisable to establish Pre-Construction Notification area threshold, perhaps 1 acre. We strongly support this GP to promote Living Seawalls and NBAs and to gather research information. We suggest revising the definition/eligible projects that contain a variety of soft and some engineering interfaces, particularly in highly urbanized areas.

GP 22 Reshaping existing drainage ditches, construction of new ditches and mosquito management: Clarify the GP to allow wetland restoration and



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enhancement activities be allowed under this GP (both tidal and non-tidal), and suggest that the threshold for SV category be increased from ≤ 500 linear feet to 1,000 linear feet

All of the modifications suggested above will help ensure the proposed revisions and reissuance of the Massachusetts General Permits are better aligned with current Federal priorities. Although Boston Harbor Now recognizes that climate resiliency efforts are urgent and applicable throughout the Commonwealth, our focus in this arena has been and will continue to be on access, equity, and resilience, which is reflected in the detailed recommendations on the proposed GPs provided here.

Thank you in advance for your consideration of Boston Harbor Now's request to significantly increase review thresholds for NBAs, especially but not exclusively for research and demonstration projects, and to conduct a public hearing for the purpose of obtaining comments from a wider and more diverse segment of the public, government agencies, and other groups like ours on these important matters. We believe that the New England District of the Army Corps of Engineers is an important partner and leader in climate resiliency and adaptation and are encouraged by your commitment to innovate and partner to achieve our collective goals.

Sincerely,

A handwritten signature in black ink, appearing to read "Katherine F. Abbott".

Katherine F. Abbott
President & CEO
Boston Harbor Now

CC:

Colonel John A. Atilano II, District Engineer, Commander
Paul Maniccia, Branch Chief, Regulatory Division
Melissa Hoffer, Chief, Governor's Office of Climate Innovation and Resilience
Secretary Rebecca Tepper, EEA
Commissioner Gary Moran, MassDEP
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