



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
NORTHEAST REGION
One Blackburn Drive
Gloucester, MA 01930-2298

March 3, 2000

Colonel Michael Pratt, District Engineer
U.S. Army Corps of Engineers
696 Virginia Road
Concord, MA 01742-2751

Dear Colonel Pratt:

In an effort to streamline interagency coordination, The National Marine Fisheries Service (NMFS) Northeast Regional Office has initiated and developed a General Concurrence to cover the required Essential Fish Habitat (EFH) consultation between our agencies for certain minor construction projects. The projects covered by this agreement include those authorized by the Army Corps of Engineers (ACOE) under Programmatic General Permits (PGP) pursuant to Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act, for the States of Maine, New Hampshire, Vermont, Massachusetts, Rhode Island and Connecticut.

Section 305(b)(2) of the Magnuson-Stevens Fishery Conservation and Management Act requires an EFH consultation for any action or proposed action authorized, funded, or undertaken by a federal agency that may adversely affect EFH. For certain types of actions that will likely result in no more than minimal adverse effects to EFH individually and cumulatively, NMFS may issue a statement of General Concurrence in accordance with the requirements of 50 CFR 600.920(f), after appropriate coordination with the federal agency, the relevant fishery management council, and the public.

Description of Programmatic General Permits

Activities covered by the State PGPs are grouped into two categories. Category I activities are those activities that the ACOE has determined to have minimal environmental impacts. Examples of Category I activities include repair and maintenance work, installation of private moorings, reconfiguration of existing docks, and installation of buoys and scientific measuring devices. Category I activities can occur without application to the ACOE. Since Category I activities are approved at the time of PGP issuance, subsequent activities do not require an authorization or action by the ACOE. Since there are no actions taken by the ACOE for Category I activities an EFH Consultation is not required. Therefore, Category I activities are not subject to this General Concurrence.

Category II activities do require an authorization by the ACOE, therefore an EFH Consultation is required for those actions. It is the Category II actions that are the subject of this General Concurrence. Examples of Category II activities generally include minor waterway fills, minor



temporary wetland fill or excavation, maintenance dredging up to 10,000 cubic yards with upland disposal, and installation of docks and piers. Applicants are required to submit an application to the ACOE for a case-by-case determination of applicability under Category II of the PGP. All Category II activities are screened by ACOE, NMFS, US Fish and Wildlife Service and the Environmental Protection Agency. The screening determines whether 1) the activities are eligible under the terms and conditions of the PGP or 2) an individual permit review is required, irrespective of whether the terms and conditions are met, based upon concerns for the aquatic environment.

The PGPs must be reauthorized every five years and undergo a public review period. PGP reauthorization considers categorization of activities covered by the PGPs. At that time the ACOE would be required to conduct a separate EFH consultation with NMFS on the anticipated effects of issuing each PGP.

Qualifying Criteria

In order for Federal actions to qualify for a General Concurrence, NMFS must determine that the actions meet the General Concurrence qualification criteria of 50 CFR 600.920(f)(2). A discussion of the qualification criteria is presented below.

Section 600.920(f)(2)(i)(A) - The actions must be similar in nature and similar in their impact on EFH. All activities considered for this General Concurrence are minor coastal development activities that are routinely authorized by the ACOE PGP process. The impacts upon EFH are similar in that they generally occur along the land/water interface or within previously impacted areas. Most of the impacts are short term or temporary. Permanent impacts are compensated for with appropriate mitigation. Actions that propose greater than minimal adverse impacts to EFH can be determined to be ineligible for the General Concurrence and an individual EFH consultation will be required.

Section 600.920(f)(2)(i)(B) - The actions must not cause greater than minimal adverse effects on EFH when implemented individually. Based upon NMFS' extensive involvement in project screening and periodic review of the terms and conditions of the PGPs, we have determined that Category II activities do not cause greater than minimal adverse effects on EFH when implemented individually. The screening process ensures that project impacts are minimized on a case-by-case basis.

Section 600.920(f)(2)(i)(C) - The actions must not cause greater than minimal cumulative adverse effects on EFH. Based upon NMFS' extensive involvement in project screening and periodic review of the terms and conditions of the PGPs, we have determined that Category II activities do not cause greater than minimal cumulative adverse effects on EFH. In instances where NMFS has determined that greater than minimal impacts are likely to occur, the ACOE at NMFS' request, has revised or modified the PGPs to minimize impacts.

Section 600.920(f)(2)(ii) - Actions qualifying for a General Concurrence must be tracked to ensure that their cumulative effects are no more than minimal. The ACOE tracks all actions that they authorize under the PGPs. NMFS utilizes the tracking information to determine whether or not cumulative effects of the actions are minimal.

Based upon the above discussion, NMFS has determined that the General Concurrence for PGP Category II activities meets the General Concurrence qualifying criteria.

General Concurrence

The following are authorized for EFH General Concurrence:

Activities listed as Category II within the PGPs for the states of Maine, New Hampshire, Vermont, Massachusetts, Rhode Island and Connecticut.

The following qualifications apply: Pursuant to 50 CFR 600.920(f)(4), NMFS requests notification in advance of all activities listed as Category II within a PGP so that we can make a case-by-case determination on the applicability of this General Concurrence. Notification will be in accordance with my April 16, 1999 letter to you describing the EFH consultation process and the use of existing regulatory procedures. Those Category II actions in which NMFS concurs with the ACOE determination that the activity will result in no more than minimal adverse effects to EFH will be covered by this General Concurrence. In cases where NMFS does not concur with ACOE's determination, NMFS will notify the ACOE during interagency coordination meetings or by other established means that the Category II action will not be covered by this General Concurrence.

NMFS will periodically review its findings of General Concurrence and may revise or revoke a General Concurrence if new information indicates that the covered actions are having more than minimal adverse effects on EFH. Should any modifications become necessary, we will notify you as early as possible. If you or any of your staff have questions about this General Concurrence, please contact Lou Chiarella, EFH Coordinator, at (978) 281-9277.

Sincerely,

A handwritten signature in black ink, appearing to read 'Patricia A. Kurkul', is written over a vertical line that extends from the signature down to the typed name below.

Patricia A. Kurkul
Regional Administrator

cc: F/NER4 - Colosi, Chiarella, Gorski, Ludwig
F/HC - Kurland
Christine Godfrey, ACOE, Concord
William Lawless, ACOE, Concord