



Water Resources

NRU RIDOT Categorical Exclusion (CE) Determination Project Narrative Guidance

This guidance is to be used along with Section B Part I of the RI Department of Transportation (RIDOT) Categorical Exclusion (CE) Determination Project Narrative (the CE Narrative). This guidance provides a basic regulatory background for, and outlines in broad strokes, the RIDOT process to document compliance with State and Federal regulations concerning water resources during the CE process.

This guidance will assist practitioners in identifying specific requirements that may be triggered by a project. It is not meant to be an exclusive or comprehensive authority on water-related legal requirements.

General Resources

[National Environmental Policy Act](#)

[40 CFR §§ 1500-1508 - Regulations for Implementing the Procedural Provisions of the NEPA](#)

[FHWA Environmental Toolkit](#)

[NEPA and Permit Condition Compliance Checklist](#)

[RIDEM Resources Map](#)

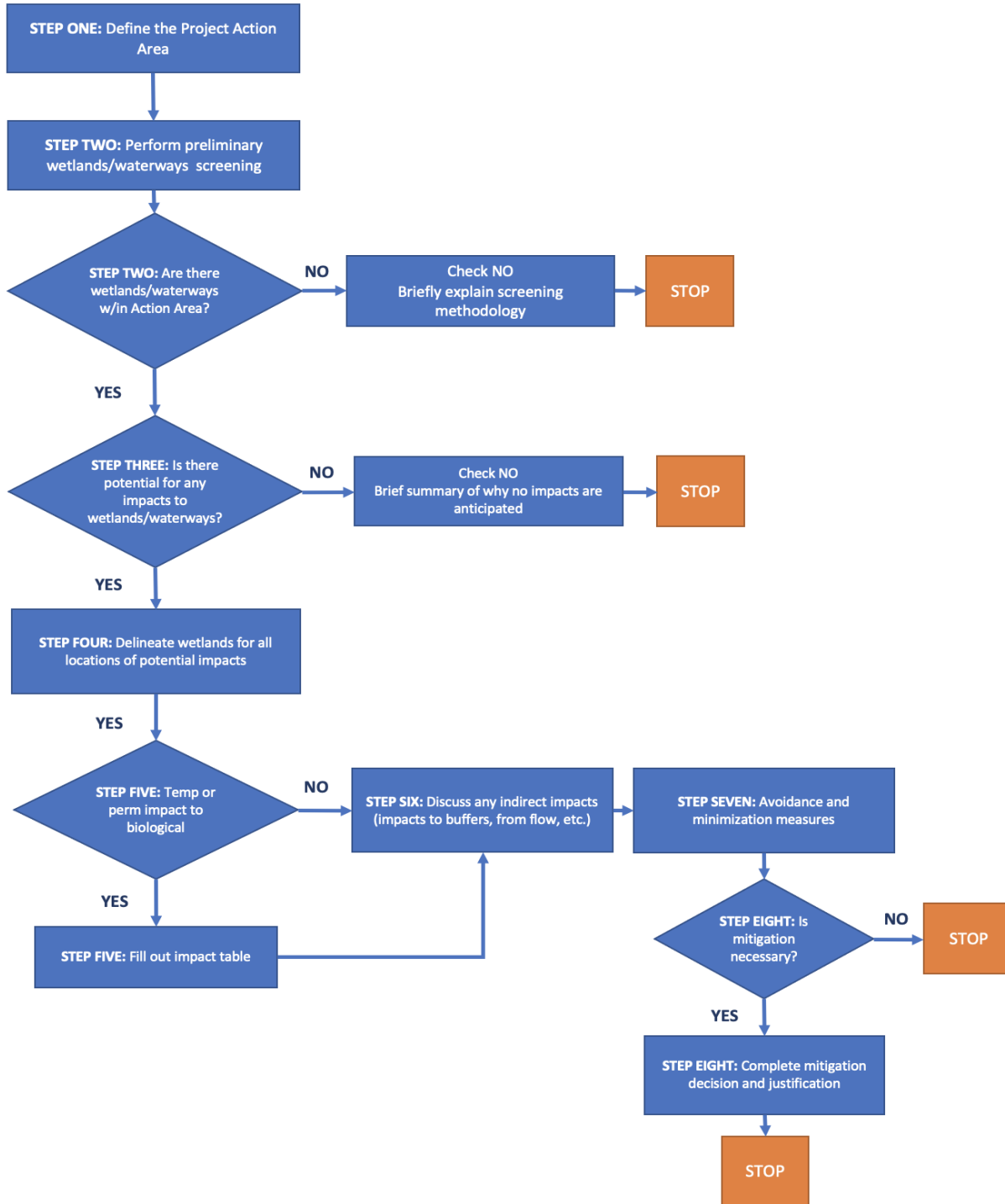
1A. Wetland and Waterway Impact Summary

Wetlands and other surface waters provide important and beneficial functions including protecting and improving water quality, providing fish and wildlife habitat, and storing floodwaters. They are protected at the federal and state level because of the important functions they perform.

The Rivers and Harbors Act (RHA), Clean Water Act (CWA), and associated regulations aim to restore and maintain existing aquatic resources. This requires that agencies strive to first avoid adverse impacts, and then minimize adverse impacts, and finally offset unavoidable adverse impacts to existing aquatic resources; and for wetlands, strive to achieve a goal of no overall net loss of functions and values. This section provides procedures for identifying, evaluating, and documenting potential wetland and waterway impacts associated with transportation projects and their regulatory mitigation requirements. At the federal level, waters of the United States (wetlands and other surface waters) are regulated by the United States Army Corps of Engineers (USACE) with support from United States Environmental Protection Agency (EPA), United States Fish and Wildlife Service (USFWS), and the National Marine Fisheries Service (NMFS). In Rhode Island, wetlands and other surface waters are regulated at the state level by the RI Department of Environmental Management (RIDEM) and the Coastal Resources Management Council (CRMC).

Process

The following flowchart can be used with the below description of steps to investigate impacts to wetlands and waterways and to describe avoidance, minimization, and mitigation measures:





STEP ONE Define the Project Action Area:

The project action area should be defined as the area with the potential to be either directly or indirectly affected by the proposed project. For example, construction of a new or temporary bridge can directly impact wetlands through direct loss (temporary or permanent fill) of wetland area. Waterways may be directly impacted by temporary or permanent fill such as from placement of a cofferdam or addition of rip rap. Widening a roadway upstream from a wetland along a stream could also indirectly affect the wetland by changing the quantity or quality of water that flows downstream to the wetland area.

STEP TWO Conduct a preliminary wetland/waterway screening and determine if there are wetlands/waterways within the project action area:

A desktop analysis should be conducted based on the project design to identify the existing environment and assess potential impacts to water resources. A field evaluation may be necessary to verify the presence or absence of water resources or regulated features that may not be geographically fixed or mapped. The study area considered for wetland and waterway resources should include where disturbance occurs with an additional study area for indirect and/or unexpected impacts (such as stormwater treatment units, lay-down areas, stockpile areas, tree clearing for utilities, etc). The wetland/waterway study area can be presented on a figure in the CE Appendix. Sources of preliminary wetland information and mapping include:

RI Soils Survey NWI Maps/GIS map of Hydric Soils

USGS 7 ½ Minute Topographic Series

Aerial Photographs

FEMA Maps

Previously determined RIDEM/CRMC wetland applications/permits/wetland edge verifications

If the potential presence of wetlands/waterways in the project area cannot be confirmed through preliminary investigations, further investigations such as field verification or delineations of the wetland boundary may be necessary to confirm if the project is within or will impact jurisdictional wetland. Coordinate with the RIDOT NRU before performing wetland delineations.

If jurisdictional wetlands/waterways are not identified within the project action area, select **no** to the statement “Project will impact waterways and/or federal/state jurisdictional freshwater/coastal wetlands” in the CE Narrative and *briefly explain what methods were used to determine the presence/absence of wetlands and waterways if applicable. STOP HERE.*

If jurisdictional wetland/waterways are identified within the project action area, select **yes** to the statement “Project will impact waterways and/or federal/state jurisdictional freshwater/coastal wetlands” in the CE Narrative and proceed to **STEP THREE.**



STEP THREE Determine if project has a potential to impact (directly, indirectly, temporary, or permanent) federal/state jurisdictional wetlands/waterways:

The next step in the process is to determine if impacts to wetlands/waterways occur as a result of project activities. It is important to note that if impacts are anticipated, temporary and permanent impacts are described under the NEPA for waters of the U.S and federal biological wetlands only. Impacts to state jurisdictional wetlands, which include wetland buffers, are described as having the potential for indirect impacts to federal biological wetlands.

If state jurisdictional wetlands are identified within the project action area, but the scope of work is such that the project will not impact biological wetland and the project activities within state jurisdictional wetland fall under the exempt activities, further investigation may not be required. A project may be considered an exempt activity under Section 3.6. of RIDEM Rules and Regulations Governing the Administration and Enforcement of the Freshwater Wetlands Act (250-RICR-150-15-3) and Section 2.6. under the CRMC Rules and Regulations Governing the Protection and Management of Freshwater Wetlands in the Vicinity of the Coast (650-RICR-20-00-2).

If the project is not anticipated to impact wetlands/waterways, select **no** to the statement “Project will impact waterways and/or federal/state jurisdictional freshwater/coastal wetlands” in the CE Narrative and *briefly explain why the project does not anticipate impacts.* **STOP HERE.**

If the project does anticipate impacts to wetlands/waterways, select **yes** to the statement “Project will impact waterways and/or federal/state jurisdictional freshwater/coastal wetlands” in the CE Narrative and proceed to **STEP FOUR.**

STEP FOUR Delineate wetlands or all locations of potential impact and provide a brief summary of how wetlands/waterways were mapped/delineated, locations and types:

If potential wetlands are found, a wetland delineation may be required to determine the exact location and boundaries of each wetland. Sources of preliminary wetland information used above in Step Two can be inaccurate and are not as reliable as a field delineation conducted to determine the presence of wetlands. It is anticipated that wetlands within or adjacent to the project area will be delineated if the project will potentially impact functions and values of the wetland. The RIDOT NRU should be contacted if there are questions on what level of documentation is adequate for NEPA documentation. Include maps and figures in the CE Appendix.

The technical requirements of identification and classification of state wetlands are part of the (1) RI Freshwater Wetlands Act (RIFWWA) and RIDEM Rules and Regulations Governing the Administration and Enforcement of the Freshwater Act (most recent version); and the (2) RICRMC Coastal Resources Management Program (CRMP), and the RICRMC Rules and Regulations Governing the Protection and Management of Freshwater Wetlands in the Vicinity of the Coast (most recent versions).



STEP FIVE Estimate biological wetland and waterway temporary and/or permanent direct impacts:

The next step is to assess direct impacts to federal waters of the U.S., which include biological wetlands. The NEPA document should include information on the location, types, and extent of areas that might be affected by the proposed action. Any impacts to state buffers should be described under indirect impacts (see Step 6).

The following table must be completed for direct impacts. See below for examples. If there are more wetlands/waterways than fit in the table, additional rows may be added:

Type/Name	Temporary Impact (acres/square feet round up to nearest 100') (below OHW/MHW)	Impact Description	Permanent Impact (acres/square feet round up to nearest 100') (below OHW/MHW)	Impact Description
<i>Palustrine Emergent Wetland, Palustrine Forested Wetland (Wetland 1 on map)</i>	<i>700 SF</i>	<i>Temporary construction access and associated construction activities.</i>	<i>1260 SF</i>	<i>Wetland will be permanently filled from construction of the east approach of the new bridge.</i>
<i>Barrington/Warren River</i>	<i>1702 SF</i>	<i>Temporary impacts from barge spud used for construction (total of 40 SF) and removal of timber supports (1662 SF).</i>	<i>56 SF</i>	<i>Permanent impact from installation of stainless steel micropiles as the supports for the new bridge. These will be drilled into bedrock.</i>

Table 1. Impact Table Attached exhibits should provide a reasonable and clear depiction of wetlands and waterways identified along the project based on the delineation reports, and anticipated impacts, if known.

Direct impacts are typically quantified based on acreage and functions disturbed. Wetland functions are the processes that take place within a wetland. Functions wetlands provide can include flood storage and protection, water quality improvement, shoreline stabilization, groundwater recharge, fish and wildlife habitat, recreation, and aesthetics.

Under impact description, describe all proposed work in the wetland(s) and/or waterway(s). Temporary impacts may include construction activities that will be fully restored to pre-construction conditions (such as equipment lay-down, staging, and building of temporary access roads). Permanent impacts may include loss from clearing and filling/excavating.

STEP SIX Discuss any indirect impacts, including impacts to state jurisdictional wetland buffers, biological wetlands and/or waterways:

Indirect impacts are those that are caused by a proposed project but are separated from direct impacts because they occur later in time or at some distance from the project, and that occur outside the footprint of direct impacts. The analysis of indirect impacts ensures that all project-related impacts are properly discussed during environmental review. Indirect impacts outside of a wetland/waterway may affect how it functions. For example, activities adjacent to a wetland may result in reduced hydrologic, water quality, or habitat functions. This could be from surface water runoff, eroded soil, or noise/lighting. Direct impacts within a wetland/waterway may also cause indirect impacts to functions in other parts of the resource. For example, placement of a new road through a wetland may cause indirect impacts because the road crossing can affect wildlife movement and the flow of water between the two remaining wetland areas.

Federal agencies generally consider impacts to and loss or reduction of wetland buffers as an indirect impact to wetland functions. Impacts to state wetland buffers should be described. The extent or area of indirect impacts from loss of wetland buffer is site and case specific. The RIDEM and CRMC regulate impacts to wetland buffers through the state's wetland regulations, even if there are no direct biological wetland impacts.

Example language:

Indirect wetland impacts would result from the increase in impervious surfaces caused by additional lanes or added road shoulders. Impacts would be expected to include increased roadway runoff, increased surface flows in adjacent streams, and erosion. New flows could contain pollutants associated with roadway runoff. Additional sediment and erosion would be expected during and after construction until exposed fill and cut slopes could be successfully revegetated. Other indirect impacts include the decrease or elimination of upland tree and/or shrub buffers between the proposed roadway corridor and wetlands adjacent to other aquatic sites.

STEP SEVEN Provide a brief summary of specific measures to avoid and minimize impact to waterways/wetlands:

Once the degree of the impacts is understood, the consideration of efforts necessary to offset potential harm occurs. The options for addressing potential impacts are to first avoid impacts, and then to minimize and mitigate impacts if they cannot be avoided. Consideration of avoidance and minimization strategies is required before evaluating compensatory mitigation needs. To describe avoidance and minimization the CE Narrative provides a list of standard measures that should be applied to every project that should be selected.

In addition, if applicable, provide a brief discussion of the specific measures anticipated to minimize harm to the impacted wetlands/waterways to incorporate into the design and construction of the project. This could include the following, but is not limited to:

- Describe methods used to avoid and minimize impacts to wetlands, such as tightening slopes, reducing the cross-section footprint, upland disposal of hydric soils, use of retaining walls, etc.



- Describe methods used to minimize impacts to waterways such as reducing fill/stabilization to the greatest extent possible, use of temporary cofferdams to control sediment when feasible, spanning the entire waterway with a bridge/open bottom arch culvert, etc.

STEP EIGHT Compensatory mitigation decision and justification:

When it is determined that there are unavoidable adverse impacts to wetlands/waterways, compensatory mitigation may be required pursuant to 33 Code of Federal Regulations (CFR) Part 325 and 332, 40 CFR Part 230.

The NEPA document must contain a description of proposed mitigation measures, with the understanding that a detailed mitigation plan must be developed to the satisfaction of the 404-permitting agency in consultation with those agencies having an interest in the affected resource.

If applicable, describe compensation for unavoidable loss including type, acres of loss, the mitigation ratio to be used, and the type and acres of compensation and the location (if known) where mitigation will occur. Include a description of coordination with Federal and State agencies where mitigation was discussed and any commitments that have been made.

Resources

[RI Freshwater Wetlands Permitting Information](#)

[CRMC Freshwater Wetlands in the Vicinity of the Coast Permitting Information](#)

[Army Corps of Engineers Mitigation](#)

1B. Executive Order (EO) 11990 – Protection of Wetlands

Regulatory Overview

In 1977 the Presidential Executive Order (EO) 11990, entitled Protection of Wetlands, was established to "minimize the destruction, loss or degradation of wetlands and to preserve and enhance the natural and beneficial values of wetlands." The Order requires Federal agencies, in planning their actions, to consider alternatives to wetland sites and limit potential damage if an activity affecting a wetland cannot be avoided. The procedures require the determination of whether the proposed project will be in or will affect wetlands. The EO 11990 seeks to prohibit new construction in wetlands unless (1) there is no practicable alternative, and (2) the project includes all practicable measures to minimize impacts.

The FHWA, through Technical Advisory T6640.8A (October 30, 1987), provides guidance on the preparation of environmental documents, including the assessment of project impacts on wetlands. The requirements of EO 11990 are implemented by the Federal Highway Administration (FHWA) under United States Department of Transportation (USDOT) Order 5660.1A and codified at 23 CFR 777. The FHWA, through Technical Advisory T6640.8A (October 30, 1987), provides guidance on the preparation of environmental documents, including the assessment of project impacts on wetlands.



RIDOT projects further comply with EO 11990 through the issuance of United States Army Corps of Engineers (USACE) Section 404 permits (see *Section 1C*), RIDEM Freshwater Wetlands permits, and the CRMC, which all regulate wetland impacts.

Process

STEP ONE Determine if the project meets the requirements of EO 11990:

If wetlands were not identified within the project action area and the project is not anticipated to impact wetlands (see *steps 1-3 under Section 1A Wetland and Waterway Impact Summary*), select **no** to the statement “Project potentially impacts federal jurisdictional (biological) wetlands and/or state jurisdictional wetland buffers” in the CE Narrative and **STOP HERE**.

If biological wetlands and/or state jurisdictional wetland buffers were identified within the project action area, select **yes** in the CE Narrative to the statement “Project potentially impacts federal jurisdictional (biological) wetlands and/or state jurisdictional wetland buffers” and read below before proceeding to **STEP TWO**.

For all projects, if the proposed action involves working within any wetlands in the project area, there must be supporting documentation that there are no practicable alternatives to construction in wetlands and that the proposed action includes all practicable measures to minimize harm to wetlands included under *Section 1A*. If this documentation is included, then the requirements of EO 1990 have been met.

If the proposed action does not include all the practicable measures to minimize harm to wetlands, the project may not be approved as proposed by FHWA. Discuss with RIDOT NRU if there are concerns on whether the requirements have been met.

STEP TWO Describe coordination and anticipated permitting requirements:

Address state permitting that will be required for work related to wetlands. Select the anticipated permit type(s):

- If it is determined that jurisdiction lies with RIDEM, determine which applications are necessary based on the scope of work and the RIDEM Freshwater Wetlands Regulations. Check off if an application will also require a wetland review for [Stormwater Construction Activity](#).
- If it is determined that jurisdiction lies with CRMC, determine which applications are necessary based on the scope of work and the regulations regarding the CRMC Freshwater Wetlands in the Vicinity of the Coast and/or a CRMC Assent.

Resources



[Executive Order 11990](#)

[23 CFR 777](#)

[FHWA Technical Advisory T 6640.8A](#)

[RI Freshwater Wetlands Permitting Information](#)

[CRMC Freshwater Wetlands in the Vicinity of the Coast Permitting Information](#)

1C. Clean Water Act 404/401

Regulatory Overview

Section 404 of the Clean Water Act (CWA) establishes a program to regulate the discharge of dredged or fill material into waters of the U.S. and to restore and maintain the chemical, physical, and biological integrity of these waters. Section 404 is codified at USC, Title 33, Chapter 26, Subchapter IV, Section 1344 (33 USC 1344). The USACE is responsible for the regulation and enforcement of Section 404, as codified at CFR, Title 33, Chapter II, Parts 320-332 (33 CFR 320). Oversight of the compliance program and ultimate authority regarding jurisdiction falls to the Environmental Protection Agency (EPA), as codified at CFR, Title 40, Chapter I, Subchapter H, Part 231 (40 CFR 231).

A permit from the USACE is required for regulated activities that result in the discharge of dredged or fill material into jurisdictional waters of the U.S. bodies of water subject to the jurisdiction of the USACE under Section 404 of the Clean Water Act, regardless of NEPA classification. This includes all interstate waters such as ponds, rivers, streams (including intermittent streams) and biological wetlands. Water of the United States is a broader term than navigable waters of the U.S. A detailed definition can be found in 33 CFR 328.3(a). Definitions of dredged material, fill material, discharge of dredged material, and discharge of fill material can be found at 33 CFR 323.2.

Section 401 of the Clean Water Act (CWA), codified at 33 USC1341, requires any applicant who seeks a permit from a federal agency for an activity that will involve a discharge into waters of the U.S. to first obtain a certification from the State that the discharge will not violate state water quality standards. In Rhode Island, RIDEM is the agency that issues these certifications. The State of RI currently has a blanket water quality certification (WQC No. 22-011) for all projects which will be authorized under USACE RI Programmatic General Permit as a Self-Verification (SV) or Pre-Construction Notification (PCN).

Any project that requires authorization from the USACE under Section 404 of the CWA/Section 10 of the Rivers and Harbors Act (RHA), or from the U.S. Coast Guard (USCG) under the General Bridge Act/Section 9 of the RHA, must also comply with Section 401.

Process



STEP ONE Determine if Section 404 applies:

The first step in this process is to determine if a permit under Section 404 of the CWA is required.

It is important to note that interstate waterways and biological wetlands are under the Corps jurisdiction, but areas subject to storm flowage (ASSFs), buffer zones, and state regulated jurisdictional areas as defined by the State wetland regulations are not. Therefore, projects with impacts to ASSFs and buffer zone areas as defined and permitted by the State do not need approval under Section 404 from the Corps.

If Section 404 does not apply, select **no** to the statement “The project will temporarily or permanently fill/dischARGE or dredge into biological wetlands or navigable waterways (see Section 1A) of the U.S and will require approval by the USACE” in the CE Narrative and **STOP HERE**.

If Section 404 applies, select **yes** to the statement “The project will temporarily or permanently fill/dischARGE or dredge into biological wetlands or navigable waterways (see Section 1) of the U.S and will require approval by the USACE” in the CE Narrative and proceed to **STEP TWO**.

STEP TWO Determine Section 404 permit type:

Next, determine the type of permit required. The USACE issues two types of permits in RI for the discharge of dredged or fill material into waters of the U.S. These include the RI General Permit (RGP) and Individual Permits (IPs). The [RI General Permit](#) includes three categories that a project may fall under: non-reporting Self-Verification Programmatic General Permit, a Self-Verification Programmatic General Permit, or a Pre-Construction Notification.

An Individual Permit may be required if activities do not fall within the conditions of the RI PGP. If an IP is anticipated, please contact the RIDOT NRU for further assistance.

STEP THREE Determine WQC type:

The State of RI currently has a blanket certification (WQC No. 22-011) for all projects applicable to the Army Corps RI Programmatic General Permit. DEM reviews compliance with the water quality certification through the review of the [Stormwater Construction/Water Quality Certification](#) application submittal.

Those projects requiring an Individual Army Corps permit will require an individual Water Quality Certification from the RIDEM (please see the RIDEM website for application guidance, if applicable).

STEP FOUR Summarize any coordination, mitigation and/or commitment measures discussed:



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This section should describe applicable reports, permitting correspondence, and any commitments made prior to CE approval with the USACE. If compensatory mitigation will be required under Section 404, refer to mitigation described in *Section 1A*.

Resources

[33 USC 1251-1387](#)

[33 CFR 320-332](#)

[40 CFR 230](#)

[USACE RI Programmatic General Permit Information](#)

[Corps of Engineers Wetlands Delineation Manual](#)

[USACE Regional Supplements](#)

[RIDOT Road-Stream Crossing Design Manual \(RIDOT NRU document\)](#)

[401 Water Quality Certifications for the RI GP's](#)

[RIDEM Section 401 Certification – Individual Permit Information](#)

1D. Executive Order (EO) 11988 – Floodplain Management

Regulatory Overview

EO 11988 – Floodplain Management directs each federal agency to take action to reduce the risk of losses associated with floods, to minimize the impact of floods on human health and safety, and to preserve the beneficial values of floodplains. Compliance with EO 11988 is required for projects that are federally undertaken, financed, or assisted and that involve a floodplain encroachment, which is an action within the limits of the base floodplain.

FHWA implements EO 11988 through CFR, Title 23, Chapter I, Subchapter G, Part 650 (23 CFR 650), Subpart A, which prescribes “policies and procedures for the location and hydraulic design of highway encroachments on flood plains, including direct Federal highway projects administered by the FHWA” (23 CFR 650.101). When transportation improvements encroach on a base floodplain, RIDOT may be responsible for the preparation of a Hydraulic Study to assess the risk involved. When the Hydraulic Study indicates a significant encroachment within the base floodplain, as defined by 23 CFR 650.105, FHWA must approve the encroachment and concur in the finding that the preferred alternative is the “only practicable alternative.” Section 650.113 provides that a “proposed action which includes a significant encroachment shall not be approved unless the FHWA finds that the proposed significant encroachment is the only practicable alternative.”

RIDOT is responsible to determine the significance of the encroachment through a Hydrologic & Hydraulic (H&H) Analysis. This same analysis is required as part of the RI State Regulations. If there is any potential for encroachment RIDEM or CRMC will require an H&H analysis and a significant



encroachment will require a RIDEM Significant Alteration permit or CRMC Category A permit with the State.

If the encroachment is significant, it will not be approved unless the FHWA finds that it is the only practicable alternative.

Process

STEP ONE Determine if the project encroaches into the base (100 year) floodplain in fresh or marine waters:

An encroachment is an action (activity) within the limits of the floodplain or an action that has the potential to change the elevation of a 100-year floodplain. Executive Order 11988 would apply to the project if the project encroaches into the base floodplain. A floodplain typically consists of a floodway, which is the channel of the waterbody that floods, and the fringe, which is the remainder of the backwater. The 100-year floodplain may also be called the base floodplain, the National Flood Insurance Program Zone A floodplain, the regulatory floodplain, or the Special Flood Hazard Area. The Federal Emergency Management Agency (FEMA) defines 100-year floodplains for most communities in the nation. If the project occurs within a community that participates in the NFIP, the FEMA maps should be utilized to determine if the project would encroach upon the base floodplain. It should be noted that the absence of National Flood Insurance Program or state base floodplain maps does not necessarily indicate that there is no base floodplain in the area. Where no state or federal data is available, RIDOT is responsible for examining other data regarding recent flood locations and developing adequate information and analysis to support the conclusions presented in the environmental document.

If the project does not encroach into the floodplain, select **no** to the statement “Project encroaches into the base (100 year) floodplain in fresh or marine waters” in the CE Narrative and **STOP HERE**.

If the project does encroach into the floodplain, select **yes to** the statement “Project encroaches into the base (100 year) floodplain in fresh or marine waters” in the CE Narrative and proceed to **STEP TWO**.

STEP TWO Determine if the project has the potential to change the Base Flood Elevation (BFE):

A hydraulic analysis may be necessary to determine potential increases in BFE or decreases in storage capacity. Any activity that modifies an existing cross-section within the floodway, will most likely require a hydraulic analysis. For example, a bridge replacement that includes the addition of scour protection next to a bridge abutment or a culvert that needs to be enlarged to meet the RIDOT Road-Stream Crossing Design Manual. A hydraulic analysis is not required if the project proposes fill within a backwater if the storage is mitigated 1:1 within the same backwater.

All replacement road-stream crossings (or retrofits) are required to meet the Optimal Standards of the Road-Stream Crossing Design Manual. If a replacement project is unable to meet Optimal Standards for all design criteria, the project must request written approval from the RIDOT Environmental Division (via email) to design to the Base Standards or the Base Standards to the maximum extent practicable (MEP)

STEP THREE Determine if the project will have a significant encroachment on a floodplain and determine if the project is consistent with E.O. 11988:



Section 650.105(q) defines a “significant encroachment” as “a highway encroachment and any direct support of likely base flood-plain development that would involve one or more of the following construction or flood-related impacts”:

- a significant potential for interruption or termination of a transportation facility which is needed for emergency vehicles or provides a community’s only evacuation route.
- a significant risk. Risk means the consequences associated with the probability of flooding attributable to an encroachment. It includes the potential for property loss and hazard to life during the service life of highway, OR
- a significant adverse impact on natural and beneficial flood-plain values such as fish, wildlife, plants, open space, natural beauty, scientific study, outdoor recreation, agriculture, aquaculture, forestry, natural moderation of floods, water quality maintenance, and groundwater recharge.

23 CFR 650.113 provides for FHWA approval of a significant encroachment only if the proposed action is the only practicable alternative, and this shall be supported by the following information:

- The reason why the proposed action must be located in a floodplain.
- The alternatives considered and why they were not practicable.
- A statement indicating whether the action conforms to applicable state or local flood plain protection standards.

If it can be determined that the action does not include a “significant encroachment,” then the “only practicable alternative finding” required by FHWA’s rules implementing EO 11988 is not required (23 CFR 650.113). Based on the findings in steps one through three, determine if the project is consistent with EO 11988.

STEP FOUR Summarize floodplain impacts and avoidance, minimization, and/or mitigation measures if any. Include any coordination, commitments and/or mitigative measures:

If the proposed project is encroaching on a 100-year floodplain, discuss any risk to, or resulting from, the action, the impacts on natural and beneficial floodplain values, the degree to which the action provides direct or indirect support for development in the floodplain and measures to minimize harm or to restore or preserve the natural and beneficial floodplain values affected by the project. Other applicable floodplain mitigation and their responsible parties should be included here.

Resources

[Executive Order 11988](#)

[23 CFR 650](#)

[RIDOT Road-Stream Crossing Design Manual \(RIDOT NRU document\)](#)

1E. Rivers and Harbors Act (RHA) Section 10 Permit

Regulatory Overview

The Rivers and Harbors Act (RHA) is codified at 33 USC 401-406 and addresses projects and activities in navigable waters and harbor and river improvements. The regulations implementing Section 10 of the



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RHA are codified at CFR, Title 33, Chapter II, Part 322 (33 CFR 322). Section 10 of the RHA requires authorization from the USACE if the project involves structures or work in or over any navigable water, as defined by 33 CFR 329, and/or any obstruction or alteration of these waters. Section 10 permits are primarily intended to preserve the course, location, condition, or capacity of navigable waters.

Process

STEP ONE Determine if Section 10 applies:

The first step in this process is to evaluate the project based on the applicability described above and determine if authorization under Section 10 of the RHA is required. If Section 10 of the RHA does not apply, no further action is necessary.

If Section 10 does not apply, select **no** to the statement “Project will involve excavation or fill within any navigable waters of the U.S. and will require approval by the USACE under Section 10” in the CE Narrative and **STOP HERE.**

If Section 10 applies, select **yes** to the statement “Project will involve excavation or fill within any navigable waters of the U.S. and will require approval by the USACE under Section 10” in the CE Narrative and proceed to **STEP TWO.**

STEP TWO Summarize any coordination and/or commitments measures discussed, if applicable:

If coverage under Section 10 of the RHA is required, Section 10 impacts are authorized under the same permit issued by the USACE under Section 404 of the CWA (see *Section 1C Clean Water Act 404/401* of this document) in the RIGP.

Include documented consideration of Section 10 of the RHA and describe all permitting correspondence and any resulting commitments, if applicable.

Resources

[33 USC 401-406](#)

[33 CFR 322](#)

[USACE RI Programmatic General Permit Information](#)

1F. Rivers and Harbors Act Section 408 Permit

Regulatory Overview

Section 408 is a part of Section 14 of the River and Harbors Act (RHA) and is codified in USC Title 33, Chapter 9, Subchapter I, Section 408 (33 USC 408). Section 408 authorizes the Secretary of the Army, on



the recommendation of the Chief of Engineers of the USACE, to grant permission for the alteration, occupation, or use of a USACE civil works project. Before authorization, the Secretary must determine that the activity will not be injurious to the public interest or impair the usefulness of the project.

If the Section 408 property is also a water of the U.S. and a Section 404 permit is required, Section 408 authorization is required prior to Section 404 authorization. This rule also applies to authorization under the Section 10 of the RHA, if applicable.

Process

STEP ONE Determine if Section 408 applies:

The first step in this process is to determine whether the project will require Section 408 authorization. A desktop analysis should be conducted to determine if there are any federal civil works projects that would be impacted by the transportation project. If it is unclear whether the transportation project would intersect with or otherwise alter or impact a federal civil works project, including any unmarked easements, contact the regulatory branch of the USACE district having Section 408 jurisdiction in order to inquire.

It should be noted that USACE easements are not depicted on most publicly available mapping resources. In some cases, the mapping might show the transportation project ROW bypassing a federal civil works project and, in these and similar cases, even when seemingly far from the federal civil works project in question, it is imperative that the USACE is contacted directly in order to determine if the transportation project would intersect an unmarked easement for the federal civil works project.

If the project would not impact a federal civil works projects, then the procedure is complete. If the Project would impact a federal civil works project, coordinate directly with USACE to begin to work through the Section 408 authorization. Contact the RIDOT NRU for assistance with Section 408 coordination. Section 408 review and authorization occurs outside of the environmental clearance process as a prerequisite, when applicable, for Section 404 authorization. Include Section 408 authorization if applicable along with Section 404 authorization documentation during the permitting process.

If Section 408 does not apply, please select **no** to the statement “Project involves the alteration, occupation, or use of a USACE civil works project” in the CE Narrative and **STOP HERE.**

If Section 408 applies, select **yes** to the statement “Project involves the alteration, occupation, or use of a USACE civil works project” in the CE Narrative and proceed to **STEP TWO.**

STEP TWO Summarize proposed impacts and any coordination, commitments and/or mitigative measures under Section 408:

If the project would impact a federal civil works project, RIDOT should coordinate directly with the USACE manager of the federal civil works project to work through the Section 408 authorization. Contact the RIDOT NRU for assistance with Section 408 coordination. Document expected Section 408 impacts and authorization requirements that are anticipated.



Resources

[33 USC 408](#)

[RI Navigation Project Maps](#)

[USACE Section 408 Information](#)

1G. Rivers and Harbors Act Section 9 Bridges and General Bridge Act

Regulatory Overview

The USCG regulates bridges and causeways over navigable waters (as defined at 33 CFR 2.36) under the authority of the General Bridge Act (GBA) (33 USC 525-533) and Section 9 of the RHA (33 USC 401-406). The USCG issues bridge permits and bridge permit exemptions for bridges and causeways and navigational lighting authorizations and navigational lighting exemptions for lighting and signals on these bridges and causeways. Lights and signals must be approved by the USCG prior to bridge construction activity and must be maintained in accordance with the requirements of the regulations at 33 CFR 118. The USCG approves the location and plans of these bridges and causeways, and associated lighting and signals, and imposes conditions relating to construction, maintenance, and operation in the interest of public navigation. Refer to the USCG website to access the Bridge Permit Application Guide for permitting procedures and guidance.

FHWA regulations pertaining to navigational clearances for bridges and procedures for USCG coordination are codified in the CFR, Title 23, Chapter I, Subchapter G, Part 650 (23 CFR 650), in Subpart H, which is 23 CFR 650.801-650.809.

Process

STEP ONE Determine if Section 9 applies:

Projects involving the construction, reconstruction, rehabilitation, and replacement of bridges and causeways, and associated navigational lighting and signals, over navigable waters are subject to compliance with the GBA and Section 9 of the RHA. Bridge permits and navigational lighting authorizations are typically issued for projects over waterways that are used day and night by commercial vessels or vessels that are more than 21 feet long. Bridge permit and navigational lighting exemptions are typically issued for projects over waterways that are used only during the daytime and by recreational vessels or vessels less than 21 feet long. The bridge permit and bridge lighting plan are separate applications.

The first step in this process is to determine whether the project involves construction activities associated with a bridge or causeway over a navigable water. Review the project description to determine if there would be a bridge or causeway involved and determine whether the bridge or



causeway is located over a navigable water. If the project does not involve a bridge or causeway that is located over a navigable water, the procedure is complete except for documentation. If the project does involve a bridge or causeway that is located over a navigable water determine whether you need a bridge permit or bridge permit exemption, and navigational lighting authorization or navigational lighting exemption.

Projects over waterways that are used day and night by commercial vessels or vessels that are more than 21 feet long typically require a bridge permit and a navigational lighting authorization. Projects over waterways that are used only during the daytime and by recreational vessels or vessels less than 21 feet long typically qualify for a bridge exemption and a navigational lighting exemption.

If there is any uncertainty throughout the procedure, the USCG must be contacted to determine if a water is navigable, whether a bridge permit or bridge permit exemption is required, and/or whether a navigational lighting authorization or exemption is required. Early coordination with USCG may be helpful in order to address any considerations prior to final design and application/request submittal. Contact the RIDOT NRU for assistance with Section 9 coordination.

If Section 9 and GBA does not apply, select **no** to the statement “Project will involve the construction or reconstruction or modification of a bridge or causeway in or over navigable waters of the US” in the CE Narrative and **STOP HERE.**

If Section 9 and GBA applies, select **yes** to the statement “Project will involve the construction or reconstruction or modification of a bridge or causeway in or over navigable waters of the US” in the CE Narrative and proceed to **STEP TWO.**

STEP TWO Determine anticipated permitting requirements and/or coordination under RHA Section 9 and the GBA:

For all projects, documented consideration of GBA/Section 9 of the RHA and a description of required compliance activities, if applicable, must be included in the CE. For all projects, anticipated GBA/Section 9 permitting requirements must be documented prior to NEPA approval.

Resources

[General Bridge Act 33 USC 525-533](#)

[Section 9 33 USC 401-406](#)

[Navigable Waters Definition 33 CFR 2.36](#)

[Bridge Lighting and Other Signals 33 CFR 118](#)

[FHWA Navigational Clearances 23 CFR 650.801-650.809](#)

[Coast Guard Bridge Permitting Information](#)

1H. Coastal Zone Management Act (CZMA)



Regulatory Overview

The Coastal Zone Management Act (CZMA) encourages states and tribes to preserve, protect, develop, and, where possible, restore or enhance valuable natural coastal resources. These resources are designated as coastal natural resources include wetlands, floodplains, estuaries, beaches, dunes, barrier islands, coral reefs, and those fish and wildlife that inhabit these areas of the coastal zone. The CZMA, administered by NOAA, is codified at USC, Title 16, Chapter 33, Sections 1451-1465 (16 USC 33, 1451-1465). Section 307 of the CZMA provides incentive for state participation in the federal coastal zone management program in the form of federal consistency. Federal consistency in Section 307 requires that various federal activities that are reasonably likely to affect any land or water use or natural resource of the coastal zone are consistent with a state's approved coastal zone management program.

Rhode Island participates in the CZMA under the Rhode Island Coastal Resources Management Program (RICRMP), which aims to ensure the long-term environmental and economic health of the Rhode Island coast and ensuring federal activities follow the consistency provisions of Section 307. The agency responsible for overseeing implementation of the RICRMP is the CRMC. The CRMC consists of planning and management programs to be followed under the CZMA. These include CRMC's regulatory requirements pursuant to the RICRMP and Special Area Management Plans (SAM Plans), the Municipal Harbor Management Program, the Rights-of-Way (ROW) Designation Program, Federal consistency reviews, Aquaculture operations management, and Submerged lands management.

The state rules for implementing the coastal management program are codified in the RI Code of Regulations (RICR) – Red Book - 650-RICR-20-00-01. The regulations in the Red Book serve as the RICR regulatory component of the Coastal Resources Management Program. The Red Book guidance document containing the findings and other non-regulatory components should be read concurrently with these regulations. The Red Book guidance document should be employed in interpreting R.I. Gen. Laws § 46-23-1, et seq.

The RICRMP contains a strategic plan for the states' coastal areas based on six CRMC water types and listed coastal shoreline features (type of shoreline). Cultural features of historical or archaeological significance are also within the jurisdiction of the Council. The regulatory authority of the CRMC is generally defined by Rhode Island's coastal zone. The seaward extent of Rhode Island's coastal zone boundary is the area extending from three miles offshore. The inland extent of Rhode Island's coastal zone boundary is a three-tiered system which is dependent on the type and location of an activity. The RICRMP and the Council's SAM Plans contain the policies and standards which govern activities within the tiers.

Transportation projects most commonly fall under the first tier, which generally extends **200 feet inland from any coastal shoreline feature**. Within this area the CRMC has authority over any development activity, including maintenance. Activities proposed within the area extending from the seaward limit of three miles offshore to 200 feet inland of any coastal shoreline feature under the first tier must be consistent with RICRMP goals and policies and the Council's SAM Plans if applicable. These activities will require Council approval in the form of an Assent, or permit. In addition, if any activity is to occur outside the coastal zone (outside of the state's waters or inland coastal zone boundary), but will affect coastal water quality, habitat, or wetlands, and that activity involves some form of federal action, then it is subject to the federal consistency requirement and the enforceable policies of the RICRMP.



Process

STEP ONE Determine if the CZMA applies:

First, determine if the project is located within the RICRMP coastal zone boundary and/or the project contains activities outside the coastal zone boundary but will affect coastal water quality, habitat, or wetlands. This can be completed by looking at CRMC jurisdiction on the RIDEM [resource map](#).

If the CZMA does not apply, select **no to** the statement “Project will involve the construction or reconstruction or modification of a bridge or causeway in or over navigable waters of the US” in the CE Narrative and **STOP HERE**.

If the CZMA applies, select **yes to** the statement “Project will involve the construction or reconstruction or modification of a bridge or causeway in or over navigable waters of the US” in the CE Narrative and proceed to **STEP TWO**.

STEP TWO Determine anticipated permitting requirements and document consistency with the RICRMP:

If the project does fall under the criteria above, the project must address consistency with the RICRMP. Projects within the RICRMP coastal zone management boundary must avoid natural coastal resources and/or obtain the appropriate permitting in order to be consistent with RICMP goals and policies. Consult the appropriate CRMC Special Area Management Plan for supplemental policies, standards, and requirements.

Determine which type of CRMC assent is anticipated. When an Assent from the CRMC is required, and the proposed activity involves either a direct or indirect federal action, the issuance of an Assent constitutes CRMC concurrence with an applicant's certification that the project is consistent with the RICRMP, and therefore the CZMA. If within the RI CZMA, the applicant will need to apply for a Maintenance Assent, Category A Assent, or Category B Assent depending on the activity type and location. Activities that require federal approval and are reasonably likely to affect any coastal use or resource, but which do not require a CRMC Assent, remain subject to the consistency requirement. Because Rhode Island's coastal resources management program is a direct permitting program, concurrence or non-concurrence with a federal consistency determination is captured in the review of state permit applications.

The project must be consistent to the maximum extent practicable with the enforceable policies of the state's coastal zone management program. Describe impacts and document anticipated consistency with the RICRMP based upon RICMP goals and policies. Describe required compliance activities, if applicable.

Resources

[16 USC 33, 1451-1465](#)



[CRMC Regulations](#)

[CRMC SAMPs](#)

[CRMC Jurisdiction](#)

1I. Coastal Barrier Resources Act (CBRA)

Regulatory Overview

The Coastal Barrier Resources Act (CBRA) was enacted in 1982 to discourage development in certain coastal areas vulnerable to hurricane damage and that host valuable natural resources. The Act designated certain undeveloped coastal areas as coastal barrier/system units under the Coastal Barrier Resources System (CBRS) and made those units ineligible for most new federal expenditures and financial assistance. Regulations for the CBRA are codified at USC, Title 16, Chapter 55, Sections 3501-3510 (16 USC 3501-3510).

There are two types of units within the CBRA: System Units and Otherwise Protected Areas (OPAs). OPA are denoted with a “P” at the end of the unit number (e.g., “RI-11P”). Most new Federal expenditures and financial assistance, including Federal flood insurance, are prohibited within the System Units. The only Federal spending prohibition within OPA’s is on Federal flood insurance, other Federal expenditures are permitted. Consultation with the Service is not needed if the proposed action or project is located within an OPA.

Three goals of the CBRA are to:

1. Minimize loss of human life by discouraging development in high-risk areas;
2. Reduce wasteful expenditure of federal resources; and
3. Protect the natural resources associated with coastal barriers.

The CBRA accomplishes these goals by restricting federal expenditures and financial assistances which have the effect of encouraging development of coastal barriers, by establishing the CBRS, and by considering the means and measures by which the long-term conservation of these fish, wildlife, and other natural resources may be achieved.

Process

STEP ONE Determine if the CBRA applies:

The first step in this process is to determine if the project is subject to provisions of the CBRA. A desktop analysis should be conducted by reviewing the CBRS unit maps. The CBRS is delineated and maintained by the U.S. Department of the Interior through USFWS. It can be determined if a project is within a CRBS by entering the project location into the USFWS Information for Planning and Consultation (IPaC) tool (<https://ipac.ecosphere.fws.gov/>). IPaC can determine if the project overlaps with a CRBS unit. A map



depicting the boundaries of the designated CBRS units can also be found at:

<https://fws.gov/cbra/maps/index.html>.

If the District determines that the project is neither in the vicinity of nor leads directly to a designated coastal barrier resource unit, then no additional documentation is required other than a statement indicating that the coastal barrier resource data layer or maps were reviewed, and no resources were identified within the project area.

If the CBRA does not apply, select **no** to the statement “Part of the project/action is in the boundary of a coastal barrier resource system (CBRS) unit” in the CE Narrative and **STOP HERE**.

If a proposed project is within or leads directly to a designated coastal barrier resource unit that is not otherwise identified as an OPA, then consultation is required with the USFWS. Select **yes** to the statement “Part of the project/action is in the boundary of a coastal barrier resource system (CBRS) unit” in the CE Narrative and proceed to **STEP TWO**.

STEP TWO Complete and document consultation with the USFWS:

For projects which may qualify for exception under Section 6 of CBRA, the consultation requirements described in the Advisory Guidelines contained in the 48 Federal Register (FR) 45664, 10/06/1983, must be satisfied. Under these guidelines, the USFWS must be consulted with and allowed to comment on the proposed action prior to commitment of federal funds. The USFWS will provide comments and determine if the federal action is consistent with the CBRA. Consultation with USFWS is not required in areas identified as OPAs.

A federal expenditure is allowable within System Units of the CBRS if it meets any of the exceptions listed under 16 U.S.C. § 3505(a). Any Federal agency proposing to spend funds within a System Unit of the CBRS must send a written request to the appropriate USFWS Ecological Services Field Office with a description of the project or action, the location of the project action, the particular CBRA exception(s), and any other supporting materials. It is the responsibility of the funding agency to provide evidence that a proposed project or action meets an exception under the CBRA. If none of the CBRA’s exceptions are applicable, the proposed project should not proceed with federal funding. The RIDOT Natural Resources Unit will submit all materials completed by the consultant to the USFWS for consultation.

The Service has developed a [flow chart](#) to assist Federal agencies in determining whether a CBRA consultation is necessary. First, enter the project into the IPaC tool, which will start a CBRA workflow for the USFWS. Next, generate a Species List and complete any consultations required for threatened and endangered species. After threatened and endangered species have been addressed, the USFWS has created an inter-agency [CBRA consultation template](#) to help facilitate consultation for the CBRA. Complete the CBRA template and email it to newengland@fws.gov with the Project Code generated by IPaC, which can be found in the header of the Species List.

Any response from the Service to a CBRA consultation request is in the form of an opinion only. The Service has not been granted veto power. The responsibility for complying with the CBRA and the final decision regarding the expenditure of funds for a particular action or project rests with the Federal funding agency.



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All projects require documentation of CBRA consideration in the project file. Documentation of consultation with USFWS including the request letter and the resulting USFWS opinion, any substantial correspondence, and any other evidence supporting the consultation.

Resources

[16 USC 3501-3510](#)

[USFWS IPaC](#)

[Coastal Barrier Resources Act \(USFWS\) Information](#)

[Project Consultation Flow Chart](#)

[CRBS Unit Maps](#)

[Inter-agency CBRA Consultation Template](#)

1J. Clean Water Act Section 402/303(d)/RIDOT Consent Decree

Clean Water Act Section 402 /303(d)/RIDOT Consent Decree

Regulatory Overview

Section 402 of the CWA established the National Pollutant Discharge Elimination System (NPDES) Permit program (33 USC 1342), which is administered by the Environmental Protection Agency (EPA) and regulates point source discharges into waters of the U.S. In Rhode Island, the permit program has been delegated to the RIDEM, which established the state's Water Quality Regulations (250-RICR-150-05-1) and the RI Pollutant Discharge Elimination System (RIPDES) permit program (250-RICR-150-10). In accordance with Chapter 46-12 of the RI General Laws, the discharge of pollutants to Waters of the State via a point source discharge is prohibited unless in Compliance with the terms and conditions of a Rhode Island Pollutant Discharge Elimination System (RIPDES) permit issued in accordance with State Regulations.

RIDEM's RIPDES permit program ensures compliance with Section 402 with the issuance of the following permits: the RIPDES Construction General Permit (CGP), RIPDES Remediation General Permit (RGP) and the RIPDES Stormwater Municipal Separate Storm Sewer Systems (MS4s) General Permit. RIDOT is also under a federal Consent Decree for further compliance under the MS4 General Permit. Determine applicability of the permits required under RIPDES program below.

Section 303(d) of the Clean Water Act requires States, territories, and Tribes to identify "impaired waters" and to establish total maximum daily loads (TMDL's) to the EPA (33 USC 1251-1387). In Rhode Island, the RIDEM is the agency responsible for maintaining the 303(d) list, setting and implementing water quality standards and reporting the status of the state's waters to the EPA. For RIDOT, compliance is achieved by following the requirements of the RIDEM Construction General Permit, the MS4 Permit, and the RIDOT Consent



Decree. RIDEM's "Stormwater Construction and WQC Form" will be required for permitting to request approval of a RIPDES CGP. For approval of a RIPDES RGP, a separate application is required.

The Federal government considers RIDOT's network of drainage structures as a system, and therefore, RIDOT is regulated as an MS4 (shorthand in the regulatory world for "municipal separate storm sewer System") and must comply with all permitting regulations. RIDOT has been required to develop and implement a Stormwater Management Program Plan (SWMPP) under their MS4 permit. The SWMPP included (among other requirements) construction and maintenance of Stormwater Treatment Units (STUs) by RIDOT. In 2011, EPA audited and found RIDOT not compliant with its SWMPP. The resolution was for RIDOT to enter a Consent Decree with the EPA and DOJ. The Consent Decree requires RIDOT to mitigate their contribution to stormwater impaired waters of the State. The RIDOT Linear Stormwater Manual was developed as part of the overall RIDOT program to improve water quality.

In accordance with the RIDOT-EPA Stormwater Consent Decree of December 22, 2015 (CV-15-433), the Department is required to provide measures for the control of stormwater runoff on all new projects (including resurfacing greater than 10,000 square feet) to reduce pollutant loadings and peak flows to receiving waters. The RIDOT Stormwater Linear Manual sets the framework for properly considering stormwater in subsequent phases of the project design in a manner that complies with the Consent Decree and the RI Stormwater Rules.

Process

STEP ONE Determine if a RIPDES CGP permit is anticipated and if the project complies with the MS4:

A RIPDES CGP would be required if the project proposes to disturb equal to or greater than 1 acre of property (meaning disturbance down to the erodible surface); or disturbs less than 1 acre but the activity is part of a larger common plan resulting in more than 1 acre of disturbance. The project will require a RIDOT large-site SWPPP.

If the project will include soil disturbance less than 1 acre and will not require a RIPDES CGP, the project will require a RIDOT small-site SWPPP in accordance with the MS4 permit.

STEP TWO Determine if a RIPDES RGP permit is anticipated:

A RIPDES RGP would be required if the project anticipates discharges associated with the treatment of remediation wastewaters within the State.

STEP THREE Determine if stormwater treatment is required:

Stormwater treatment requirements apply to all RIDOT projects unless the project has received an exemption from the RIDOT Environmental Division. All non-exempt RIDOT projects, such as reconstruction, maintenance and preservation activities, redevelopment, pavement management and other infrastructure development as defined in the Consent Decree and RI Stormwater Rules, are



required to consider stormwater management as part of the project design for RIDOT compliance with the EPA Consent Decree. For example, projects such as marking pavement, installing traffic loops, constructing wheelchair ramps, crack sealing, and bridge washing may receive exemptions from the RIDOT Environmental Division. If the project is exempt, skip to **STEP SIX**.

STEP FOUR Determine stormwater treatment Goals (Stormwater Worksheet A):

The RIDOT Consent Decree and an agreement with RIDEM requires every applicable RIDOT project to have a goal of 50% water quality treatment for disturbed existing impervious cover and 100% water quality treatment for increased/new impervious cover.

Stormwater Worksheet A must be completed, instructions can be found in the RIDOT Stormwater Worksheets Help Document.

STEP FIVE Determine Compliance with the Consent Decree and RIDEM/CRMC Permitting Goals (Stormwater Worksheet B-30%):

Stormwater worksheet B-30% must be completed as part of the CE process to determine compliance with the consent decree and RIDEM/CRMC Permitting Goals. Typically, the Consent Decree goals are higher than RIDEM permitting goals, so at a minimum, permitting goals must be met. RIDOT's approach to meeting stormwater goals is a tiered approach. Tier 1 includes the simplest, least costly methods for stormwater crediting. This tier includes de-paving, identifying non-discharge areas, and disconnecting pavement from waterbodies. The other Tiers are explained in the RIDOT Stormwater Worksheets Help Document. As you are identifying stormwater treatment opportunities, the level of effort to meet the consent decree goals differ based on watershed designation and in general:

- a. Non-Impaired waters – use Tier 1 STUs & Repair Existing STUs, swales, ponds, etc.
- b. Impaired Waters with <10 Impervious Cover and no TMDL – use a. above and Tier 1 STUs
- c. Impaired Waters with future Stormwater Control Plans – use a. and b. above and Tier 2 STUs
- d. Impaired Waters with EPA Approved Stormwater Control Plan – use a., b., and c. above and Tier 3 STUs

Attach Worksheets A and B-30% to the CE

NOTE: The Consent Decree requirements are not to be confused with stormwater permitting through RIDEM and CRMC. If the project does not require state permitting, it must still meet the requirements of the Consent Decree. Also, if the project does require permitting, it must meet the RIDEM/CRMC permitting goals with any Tier or combination of Tiers necessary to meet the permitting goals.

STEP SIX Identify drainage structures for cleaning and/or repairs:



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To comply with the RIDOT Consent Decree, the project must include drainage structure/system cleaning and repair. Coordinate with the RIDOT Environmental Division Stormwater Section for assistance in determining the drainage system components to be cleaned &/or repaired. The requirements of the Consent Decree apply to all RIDOT projects unless the project receives an exemption from the RIDOT Stormwater Section.

Resources

[33 USC 1251-1387](#)

[RIDEM Stormwater Construction Permitting Information](#)

[RIDEM Water Quality](#)

[Remediation General Permitting Information](#)

[RIDOT Stormwater Management Program](#)

[RIDOT Consent Decree](#)

[RIDOT Stormwater Linear Manual](#)

[Stormwater Worksheets](#)

[OSM Stormwater Program and SCP Public Web Map](#)

1K. Safe Water Drinking Act/Sole Source Aquifers

STEP ONE Determine if RIPDES GWD/UIC permit is anticipated:

A RIPDES GWD/UIC permit would be required if the project proposes an infiltration system listed in 8.21 of the RIDEM Stormwater Rules (i.e. infiltration trench, infiltration basin, UIC chamber or drywell) that receives stormwater from a non-residential road or parking area of any size.

STEP TWO Determine if project is located within a Sole Source Aquifer, and if EPA approval will be required:

If the project is located within a sole source aquifer, EPA approval may be required depending on project type and construction activities. For further guidance on determining if EPA approval will be required, contact Vin Palumbo (vincent.palumbo@dot.ri.gov).

Resources

[New England Sole Source Aquifer Program](#)