

# Response to Comments on Proposed Freshwater Wetlands General Permit

A compilation of comments from all comment letters received

Prepared by the Rhode Island Department of Environmental Management Office of Water Resources  
(DEM)

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**Comment 1:** The General Permit (GP) should include wetland restoration projects, culvert removals for the purpose of daylighting streams and improving passage for aquatic organisms, wetland restoration projects that involve removal of fill, and invasive plant removal as eligible project activities (Save the Bay; Wood-Pawcatuck Watershed Association and Wood-Pawcatuck Wild and Scenic Rivers Stewardship Council (WPWA and WP Stewardship Council)).

**Response 1:** DEM recognizes the potential benefit for such activities to be authorized through a GP. The project types included in the initial General Permit were selected because of their limited scope and predictability with respect to potential impacts on wetland resources. Additionally, DEM chose to focus on projects and activities for which it is anticipated there will be a higher demand and thus a larger streamlining opportunity. Eligible activities were limited in the first version of the GP to allow staff to become familiar with and to evaluate the GP process and, if necessary, improve the process before adding more activities. DEM agrees that some of the activities reflected in the above suggestions for eligible project activities may be appropriate for inclusion in a future GP. However, DEM also has experience with wetland restoration and culvert projects that are complicated, require engineering reviews and would therefore not be appropriate to review under a GP process. It is also noted that some limited restoration and invasive removal activities are in fact currently exempt under the Rules.

**Comment 2:** GP applications will result in clearing and grading in the outer edges of the buffer, potentially in areas with high quality habitat, which the best available science shows is vital to keep intact for water quality and habitat. The Freshwater Wetland Buffer Standards specified in Rule 3.7.1(B) are not adequate to protect wetland functions (Save the Bay).

**Response 2:** The Buffer Standards in the GP are consistent with the Buffer Standard in the Rules and Regulations Governing the Administration and Enforcement of the Freshwater Wetlands Act (250-RICR-150-15-3) (FWW Rules). No eligible activities in the GP (with a limited exception for stormwater retrofits near highway wetlands) allow work in buffers since the FWW Rules require avoidance and minimization of alterations to freshwater wetlands, buffer, and floodplain. The GP may allow work within *buffer zones*, but it does not allow work in *buffers*.

**Comment 3:** In Section 3.10(A)(4), consider rewording the first paragraph for clarity to read: "*This section applies to projects of any kind not otherwise listed above within Jurisdictional Area that are located outside of all freshwater wetlands and designated buffer zones, or that are outside of Jurisdictional Area but may not be undertaken without approval from RIDEM pursuant to Rule 3.5.6(B). All standard terms and conditions of this permit and with all the following project-specific requirements remain applicable:*" (Save the Bay)

**Response 3:** This paragraph has been reworded to provide clarity while maintaining consistency in language with the other sections of Section 3.10(A).

**Comment 4:** General Permit applications should require an appropriately trained wetland professional, independent of the developer, to inspect the property, properly identify wetland resources and prepare the application if there is no verified edge on file. A biologist should check to ensure the limit of disturbance makes sense given site constraints that may not be visible from an aerial photo review, including ledge outcropping and sites built on unconsolidated fill. Applications prepared by professionals result in better quality applications, decreasing staff time required to review them (Save the Bay; WPWA and WP Stewardship Council).

**Response 4:** DEM agrees it is often advisable to engage a professional biologist in preparing an application. However, DEM has not made it mandatory because there will be situations where that expertise is not necessary due to the project type or site conditions. DEM will continue to provide guidance as to when the use of a professional and/or a verified freshwater wetland edge is recommended. DEM also reserves the right to inspect any property subject to a GP at any time. It is always the applicant's responsibility to propose a project that takes site conditions into account. If DEM decides to require the involvement of a professional wetland scientist in the future, standards will first have to be promulgated to define what is considered a wetland professional because there is no statewide requirement or certification for wetland professionals, like there is for a Professional Engineer or a Professional Land Surveyor.

**Comment 5:** We recommend that Applications for a Freshwater Wetlands General Permit require a Site Work Affidavit Form. A clearly marked limit of disturbance on the site is essential, so that contractors preparing the site for development know where to install perimeter erosion controls. Clearing, grading, and soil disturbance beyond the approved limit of disturbance is an incredibly common violation that has long term impacts to wetlands (Save the Bay).

**Response 5:** DEM will not require a Site Work Affidavit Form for GP applications. Many of the requirements related to the GP include verifying that work is not occurring within buffer and this information can be easily verified by DEM using aerial images and site plans. Contractors working from approved site plans are expected to be working within the approved limit of disturbance and placing erosion controls in the appropriate locations. DEM acknowledges that exceeding an LOD is a frequent violation, but we do not believe that requiring a Site Work Affidavit Form will have a substantial preventative effect since such unauthorized work may occur regardless of whether a Site Work Affidavit is provided. DEM is evaluating other methods throughout the permitting programs to reduce the chances of such violations from occurring and will investigate other options if it becomes a significant issue with GP applications.

**Comment 6:** The term "BMP's" should be changed to "BMPs" throughout the document (indicating plural rather than possessive) (Rhode Island Department of Transportation (RIDOT)).

**Response 6:** This term has been updated throughout the GP.

**Comment 7:** In Section 3.10(A)(3)(c) does the word "patterns" in the condition "Existing runoff patterns to receiving freshwater wetlands must be maintained" refer to runoff changing watersheds? Is interception in infiltration of flow acceptable? (RIDOT)

**Response 7:** The word "patterns" in terms of maintaining existing runoff patterns, does refer to watersheds, meaning that it is not acceptable to divert runoff to a different watershed or receiving

wetland. Interception via infiltration is acceptable, since doing so changes time of concentration and converts runoff from surface runoff to baseflow in receiving wetlands within the same watershed.

**Comment 8:** Section 3.10(B)(2)(b): The phrase “A narrative description” should be changed to “A written description” to avoid confusion with the current “narrative” submitted for regular permit submissions (RIDOT).

**Response 8:** The phrase has been changed from “narrative description” to “written description” in the GP.

**Comment 9:** In reference to Section 3.10(C)(1), time could be saved if there were an authorization section on the GP application itself (RIDOT).

**Response 9:** DEM appreciates the suggestion but based on internal discussion of workflow and authorization processes, DEM has decided to move forward by issuing template authorization letters. These letters will occasionally need customization which is not easily accomplished with a form. DEM can evaluate and change the method of issuing authorization as needed without altering the GP itself.

**Comment 10:** In reference to Section 3.10(D)(6), it may be worthwhile to state that prior to start of construction, sediment practices shall be installed and during construction they should be maintained or replaced as necessary (RIDOT).

**Response 10:** DEM believes the condition is sufficient as written. There may be occasions when it is acceptable to put controls in place after the start of construction, for example, to prevent damage to controls during tree clearing. The responsibility is on the applicant to ensure that controls are in place when needed to prevent sedimentation.

**Comment 11:** In reference to 3.10(D)(6) and 3.10(D)(7), refer to erosion and sediment controls with the same language in each condition for consistency (RIDOT).

**Response 11:** The language in these conditions has been updated to be consistent.

**Comment 12:** In reference to Section 3.10(D)(9), could there be some flexibility for fill in a floodplain with compensation? Perhaps consider the phrase “no increase of fill in the floodplain” (RIDOT).

**Response 12:** Allowing fill in the floodplain so long as it is compensated would require an elevated level of review by a DEM engineer to confirm that fill has been properly compensated, since impacts to floodplain have significant consequences if improperly compensated for. This level of review is beyond the scope of a GP.

**Comment 13:** In reference to 3.10(D)(11), isn't the purpose of a GP to ensure that projects do not result in degradation of natural characteristics of any rare wetland type or the ability of a freshwater wetland or buffer to ensure the long-term viability of any rare animal or plant species? If a project does result in these impacts, what will DEM do about it? What is the purpose of this condition? (RIDOT)

**Response 13:** It is expected that the activities authorized under the GP would not result in impacts of concern to rare wetlands or rare species. However, it is possible that projects may be proposed that result in alteration to wetland and/or buffer and/or involve impacts of concern to rare species or

wetland, despite the applicant's assertion to the contrary. This condition is included to remind the applicant of this potential concern and the expectation to design their project to prevent these potential impacts.

**Comment 14:** In reference to condition 3.10(D)(12), does this condition apply to every project or only projects where invasives have been found? If it applies to every project, the condition should be worded differently. Is the remedy (cleaning before and after use of vehicles and equipment) for the spread within the jurisdictional area or from site to site? Do vehicles and equipment need to be cleaned every day? The spread of invasives between sites is of more concern. The following language is suggested: "In order to prevent or spread the introduction of non-native species, all vehicles and equipment must be inspected and cleaned before they are to be used on-site. Vehicles shall not be utilized between sites without inspection and cleaning". If you are concerned about the areas within a site, we suggest requiring the flagging of an "invasive zone" and cleaning/inspecting everything that moves out of that zone (RIDOT).

**Response 14:** This condition is intended to apply to all projects. It is the opinion of DEM that the proposed language is not substantially different from what RIDOT proposes and is consistent with similar language contained in the General Conditions that apply to all exempt activities as described in Section 3.6.1(E) of the Rules.

**Comment 15:** We suggest combining condition 3.10(D)(11) with condition 3.10(D)(13) (RIDOT).

**Response 15:** DEM does not find it necessary to combine these two conditions.

**Comment 16:** The Notice of Termination (NOT) is not mentioned in section 3.10(D)(15) (RIDOT).

**Response 16:** The NOT applies only to retrofit projects over one acre. There will be a condition within the authorization specific to such projects that require the NOT.