ENVIRONMENTAL PERMITTING in COASTAL MASSACHUSETTS

Massachusetts Office of
Coastal Zone Management

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ENVIRONMENTAL PERMITTING IN COASTAL MASSACHUSETTS

Massachusetts Office of Coastal Zone Management

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INTRODUCTION

The Massachusetts environmental permitting process is designed to protect diverse resources and includes a variety of programs and statutes. This guide offers brief descriptions of the major Massachusetts environmental permit programs, which are organized into the following topic areas:

- Projects with State or Federal Funding, Permits, or Approval
- Protected and Managed Areas
- Waterfront Areas (Ports, Harbors, and Tidelands)
- Water Quality
- Wetlands and Floodplains
- Protected Species and Habitats
- Archaeological and Historic Resources
- Zoning and Construction
- Facility Operations (Water Supply, Air Quality, and Waste Facilities)

Each description includes the following parts:

- The name of the environmental permit or requirement *(numbered in consecutive order)*
- The legal citations for the authority
- The area or activities under jurisdiction
- The types of regulated activities
- A regulatory summary
- A summary of the review process
- Forms and fees, contact information, and links to additional resources

The primary focus of this guide is on Massachusetts statutes and regulations, but information about applicable local and federal statutes is also included. Descriptions of relevant Executive Orders (for the topic areas of floodplains, barrier beaches, and climate change) are provided as an appendix. Though permits are organized into topic areas, many regulatory authorities and programs have overlapping jurisdictions (e.g., the U.S. Army Corps of Engineers has regulatory authority over water quality, wetlands, and waterfront areas), and cross referencing is used throughout this document.

For many of these permits, pre-application meetings can be scheduled with state and federal regulators to cover questions about the process in advance. The Massachusetts Environmental Policy Act Office, Massachusetts Department of Environmental Protection, Massachusetts

Office of Coastal Zone Management, and U.S. Army Corps of Engineers offer pre-application meetings that include all relevant regulators. Contact information for each of these agencies is included in this guide.

For the complete text of the statutes, regulations, and Executive Orders cited, visit:

- Massachusetts General Laws
- Code of Massachusetts Regulations
- Massachusetts Executive Orders
- United States Code/Federal Statutes
- Code of Federal Regulations
- Federal Executive Orders

PROJECTS WITH STATE OR FEDERAL FUNDING, PERMITS, OR APPROVALS

Certain projects that require state or federal funding, permits, or approvals are subject to comprehensive review processes with state and federal agencies evaluating the environmental impacts of proposed actions prior to permitting. These reviews allow for public comment, disclosure, and development of feasible strategies to avoid, minimize, and mitigate environmental impacts. The following three comprehensive environmental review processes are described in this section:

- **Massachusetts Environmental Policy Act (1)** - This process provides opportunities for public review of state permits or funding that may impact the environment.
- **National Environmental Policy Act (2)** - This federal law creates a system for assessing the environmental impact of and alternatives to federal actions that may significantly affect the environment.
- **Federal consistency review (3)** - This review ensures that federal licenses or permits are consistent with state coastal program policies.

1. Massachusetts Environmental Policy Act

Authorities
M.G.L. c. 30, §§ 61-62H: Massachusetts Environmental Policy Act (MEPA); 301 CMR 11.00: MEPA Regulations

Jurisdiction
Projects undertaken by a state agency or requiring a license or permit, land transfer, or funding from a state agency

Regulated Activities
Projects undertaken by a state agency or requiring a license or permit, land transfer, or funding from a state agency are subject to Massachusetts Environmental Policy Act (MEPA) review if they exceed certain thresholds established in the MEPA regulations. Examples of thresholds include, but are not limited to:

- Alteration of 25 or more acres of land.
- Creation of five or more acres of impervious area.
- Disturbance of greater than two acres of designated priority habitat that results in a take of a state-listed species.

- Alteration of coastal dunes, barrier beaches, or coastal banks; alteration of 500 feet of fish run or inland bank; alteration of 1,000 square feet of salt marsh or outstanding resource waters; alteration of 5,000 square feet of bordering or isolated vegetated wetlands; alteration of one-half acre of other wetlands; and new or expanded fill or structure in a velocity zone or regulatory floodway.
- Dredging and/or disposal of 10,000 or more cubic yards of material, unless disposed at a designated in-water disposal site.
- Provided that a Chapter 91 License is required, new or expansion of existing nonwater-dependent use of waterways or tidelands.
- Any project proposed within a designated Area of Critical Environmental Concern (ACEC), unless the project consists solely of one single-family dwelling.

See the complete list of MEPA thresholds (301 CMR 11.03: Review Thresholds) to determine if a project requires MEPA review and what type of reporting is required (i.e., an Environmental Notification Form [ENF], an ENF followed by a mandatory Environmental Impact Report [EIR], or an ENF followed by other MEPA Review if required by the Secretary of Energy and Environmental Affairs). For projects below thresholds, the Secretary also retains the discretion to require the applicant to file an ENF or undergo other MEPA review.

Regulatory Summary

The MEPA Office within the Executive Office of Energy and Environmental Affairs (EEA) administers this review. MEPA provides opportunities for public review of potential environmental impacts of projects that require state agency action and helps state agencies satisfy their obligation to avoid damage to the environment—or if damage to the environment cannot be avoided, to minimize and mitigate the damage to the maximum extent practicable. MEPA review must be completed before a state agency can take action on the project.

MEPA review informs project proponents and state agencies of potential adverse environmental impacts while a proposal is still in the planning stage. The proponent, through the preparation of one or more review documents, identifies required state agency actions and describes the means by which the proposal complies with applicable regulatory standards and requirements. Review thresholds are provided for: land; rare species; wetlands, waterways, and tidelands; water; wastewater; transportation; energy; air; solid and hazardous waste; historical and archeological resources; and state designated ACECs. The Global Warming Solutions Act of 2008 amended M.G.L. c. 30, § 61 to add the requirement that state agencies also consider reasonably foreseeable climate change impacts, including additional greenhouse gas emissions (GHG) and effects (such as

predicted sea level rise), and ensure that projects subject to MEPA take all feasible measures to avoid, minimize, or mitigate damages to the environment. Executive Order 569 (see appendix), issued in 2016, expanded on these efforts to mitigate and reduce greenhouse gas emissions and build resiliency to the impacts of climate change, and now consideration of GHG/climate change impacts is an integral part of the MEPA review process. MEPA is also focusing on incorporating Environmental Justice practices into the MEPA review process. Proponents should consult the MEPA website for the most updated Environmental Justice documents that may specify other requirements in addition to those summarized below.

Review Process

Proponents of projects that require a state agency action and that meet or exceed one or more related MEPA review thresholds must file an ENF and may be required to file an EIR. Notices of the availability of ENFs, EIRs, and other review documents are published in the *Environmental Monitor* (issued twice monthly). A public comment period begins on the day that the Monitor is published. The total review period for an ENF is 30 days—20 days for public comment and up to 10 additional days for the EEA Secretary to issue a Certificate on the ENF, which will state whether or not an EIR is required, and if so, what the scope of the EIR will be.

The scope of MEPA jurisdiction is broad (i.e., extends to all aspects of the project) when the project is undertaken by a state agency or involves financial assistance from a state agency. MEPA jurisdiction is limited when a project is undertaken by an individual and requires one or more permits or involves a land transfer but does not involve financial assistance. Proponents should consult the MEPA regulations for further guidance on jurisdiction.

The total EIR review period is 37 days: 30 days for public comment and up to seven additional days for the Secretary to issue a Certificate stating whether the EIR adequately and properly complies with MEPA and its implementing regulations (review times can be extended with the permission of the applicant). No state permits can be issued until the EEA Secretary certifies that a EIR complies with MEPA—and that environmental impacts have been fully described and all necessary plans to avoid, minimize, and mitigate adverse effects are in place.

The MEPA regulations also provide mechanisms for "fail-safe review" of projects that do not necessarily trigger the given review thresholds (301 CMR 11.04), project changes and time lapses (301 CMR 11.10), and waivers of certain provisions of the regulations (301 CMR 11.11). MEPA staff also highly encourage pre-filing consultation meetings.

Forms
MEPA Forms
Ready to File

Fees
None

Contact
Massachusetts Environmental Policy Act Office (see Contact Us)
MEPA Office Contact List

Additional Resources
301 CMR 11.00: MEPA Regulations
Massachusetts Environmental Policy Act Office
MEPA Resources

2. National Environmental Policy Act

Authorities
42 U.S.C. §4321 et seq.: National Environmental Policy Act of 1969; 40 CFR 1500: Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act

Jurisdiction
Projects or programs requiring a federal agency action

Regulated Activities
Federal agencies must evaluate the environmental effects of, and alternatives to, a proposed action or program.

Regulatory Summary
The National Environmental Policy Act (NEPA) established environmental protection as a national policy goal and directed all federal agencies to consider the environmental consequences of proposed actions prior to making decisions. The NEPA review provides for: opportunities to integrate national environmental policy into project planning, public and agency review of potential environmental effects of federal programs and actions (including issuance of federal permits), coordinated and inter-disciplinary program planning, and

resolution of disputes among agencies. Most federal agencies have promulgated regulations governing the incorporation of NEPA reviews into their programs.

Review Process

NEPA provides a system for assessing the environmental impact of and alternatives to federal actions that may significantly affect the environment. The centerpiece of this system is the Environmental Impact Statement (EIS), which includes an analysis of alternatives to the proposed action, a discussion of impacts from the proposed action, and disclosure of any irretrievable commitment of resources. A federal agency undertaking an action will typically either prepare an Environmental Assessment (EA) to determine whether there are significant impacts to address (or whether impacts can be mitigated to fall below the significance level), or prepare an EIS to more fully examine alternatives, impacts, and mitigation. One federal agency is designated as the "lead agency" and will prepare the EIS. Other federal and state agencies may play an official role in preparing the EIS by becoming "cooperating agencies" with the lead agency.

Throughout the NEPA process, agencies are required to provide meaningful opportunities for public participation. The EIS must be published in the *Federal Register*, which begins the required public comment period (during that time, agencies can gather comments through emails, written comments, public meetings, formal hearings, and informal workshops). For an EA, the agency has discretion in the level of public involvement (ranging from making the EA available to interested members of the public to a formal public comment period). At the conclusion of the EA process, the lead agency will either issue a Finding of No Significant Impact or decide to prepare an EIS. At the completion of the EIS process, which includes a scoping process and the issuance of draft and final EISs, the lead agency issues a Record of Decision explaining its decision, alternatives that were considered, and plans for mitigation and monitoring, if necessary.

Coordination among federal agencies, as well as with state, tribal, or local agencies, is generally recommended to identify the full scope of issues, define the purpose and need for a proposal, and determine the range of alternatives to be considered.

Forms

See EIS filing guidance.

Fees

Project proponents are likely to be asked to contribute to the cost of preparation of the EIS.

Contact
The lead federal agency is the point of contact for a NEPA review process.

Additional Resources
40 CFR 1500: Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act
U.S. Environmental Protection Agency's National Environmental Policy Act page
NEPA.gov

3. Federal Consistency Review

Authorities
16 U.S.C. 1451 *et seq*.: Coastal Zone Management Act of 1972, as amended, 15 CFR 930; M.G.L. c. 21A, §§ 2, 4: Massachusetts Coastal Zone Management Act, 301 CMR 20.00: Coastal Zone Management Program

Jurisdiction
Any project undertaken by or on behalf of a federal agency, requiring a federal license or permit, or receiving federal funding that is in or may affect the land or water resources or uses of the Massachusetts coastal zone, and any plan for the exploration or development of, or production from, an outer continental shelf area requiring a federal offshore oil and gas lease

The official Massachusetts coastal zone includes the lands and waters within the seaward limit of the state's territorial sea to generally 100 feet beyond (landward of) the first major land transportation route encountered (a road, highway, rail line, etc.). Included in the state's coastal zone is all of Barnstable County, Dukes County, and Nantucket County (i.e., Cape Cod, Martha's Vineyard, Nantucket, and Gosnold), tidal rivers and adjacent uplands, and anadromous fish runs in coastal towns. The jurisdictional authority of the Massachusetts Office of Coastal Zone Management (CZM) may extend beyond the defined coastal zone boundary when activities in adjacent marine waters or land areas can be reasonably expected to affect the resources, land, or water uses of the Massachusetts coastal zone.

Regulated Activities
Any project proposal that is above certain thresholds and that requires a federal license or permit must be found to be consistent with CZM's coastal policies.

Regulatory Summary

CZM's federal consistency regulations require that federal actions that have reasonably foreseeable effects on any land or water use or natural resources of the state coastal zone must be consistent with the policies of the federally approved coastal management program. Within this authority, CZM may review federal actions affecting coastal uses and/or resources—regardless of whether the action occurs within or outside the state coastal zone boundary—to ensure that such activities are consistent with the state's enforceable program policies. These policies are based on existing Massachusetts statutes and regulations and offer policy guidance on coastal hazards, energy, growth management, habitat, ocean resources, ports and harbors, protected areas, public access, and water quality. The project-specific federal activity cannot take place until CZM concurs that the project is consistent with these policies.

Review Process

To initiate federal consistency review, an applicant must submit a copy of the federal license or permit application, a federal consistency certification that describes the project's compliance with CZM's policies, and all necessary data and information as specified in the CZM Policy Guide. If the project is subject to the Massachusetts Environmental Policy Act (MEPA) **(1)**, a copy of the final MEPA Certificate must also be submitted. CZM will place a public notice in the *Environmental Monitor* and will accept written comments for 21 days after the date of publication. CZM may concur with an applicant's federal consistency certification any time after the close of the public comment period and after the project has received all other applicable state authorizations, certificates, licenses, and permits. Federal consistency review timelines can also be found in the CZM Policy Guide. If CZM objects to an applicant's federal consistency certification and finds that the proposed project is not consistent with its policies, the applicant can appeal that decision to the U.S. Secretary of Commerce. Pre-application consultation with CZM is encouraged to ensure that application requirements and review procedures are well understood and that the consistency review process occurs in a timely and efficient manner.

Forms

While no separate forms are required, applicants must provide copies of the MEPA Certificate (if applicable), the federal permit application, a federal consistency certification, and all necessary data and information specified in the CZM Policy Guide. See Apply for Federal Consistency Review and CZM's Policy Guide for details.

Fees

None

Contact

Apply for Federal Consistency Review (see Contact Information)

Additional Resources

301 CMR 20.00: Coastal Zone Management Program

Massachusetts Office of Coastal Zone Management

Federal Consistency Review Program

CZM Policy Guide

PROTECTED AND MANAGED AREAS

Particular areas of the coast and ocean with unique natural resources or water-dependent uses are afforded extra protection and management measures through special designations. The following programs covering protected and managed areas are described in this section:

- **Areas of Critical Environmental Concern (4)** - This program creates a framework for local and regional stewardship of critical resources and ecosystems that are designated for their statewide significance.
- **Ocean Sanctuaries Act (5)** - These five specified marine areas in Massachusetts are protected from exploitation, development, or activities that would alter or endanger their ecology and appearance.
- **Massachusetts Ocean Management Plan (6)** - The ocean plan protects critical marine habitat and important water-dependent uses and sets standards for new ocean-based projects in Massachusetts ocean waters.

4. Areas of Critical Environmental Concern

Authorities
M.G.L. c. 21A, § 2(7): Areas of Critical Environmental Concern; 301 CMR 12.00: Areas of Critical Environmental Concern

Jurisdiction
Designated coastal and inland Areas of Critical Environmental Concern (ACEC)

Regulated Activities
Projects or activities that are subject to state agency jurisdiction, regulation, or funding and occur within an ACEC are reviewed with closer scrutiny to avoid or minimize adverse environmental impacts to the ACEC. Most projects in ACECs, particularly those with large impacts, must go through the Massachusetts Environmental Policy Act (MEPA) **(1)** review process. Certain activities regulated under the Massachusetts Department of Environmental Protection (MassDEP) Wetlands **(14)** and Waterways (Chapter 91) Programs **(9)**, such as dredging or new pier construction, may be prohibited. Applicants are encouraged to contact ACEC staff, the local Conservation Commission, or MassDEP to confirm the applicability of ACEC regulations to the proposed project.

Regulatory Summary
The purpose of the ACEC Program is to preserve, restore, and enhance environmental

resources and to facilitate the stewardship and protection of these designated areas of statewide significance. For each ACEC, the program: 1) strives to assist in the identification, designation, and stewardship of critical resources; 2) encourages an increase in the level of resource protection; and 3) supports municipalities, state agencies, non-governmental organizations, and individuals in the development and implementation of resource management plans and restoration projects.

Generally, municipalities and citizen organizations nominate proposed ACECs. Once designated as an ACEC by the Massachusetts Secretary of Energy and Environmental Affairs, resource protection is enhanced and projects receive closer regulatory scrutiny by state agencies and local regulators, such as the Conservation Commission. Certain activities, such as improvement dredging and new pier construction, are prohibited until the specific activity is incorporated into a resource management plan that is approved by participating municipalities and the Secretary of Energy and Environmental Affairs.

Review Process

The following reviews are required for a project proposed in an ACEC:

- **MEPA (1)** - Projects that require state permits, use state funding, or involve state agency actions within an ACEC are reviewed with closer scrutiny under MEPA. These projects typically trigger the filing of an Environmental Notification Form (ENF) (301 CMR 11.03), with the exception of single-family house construction or routine maintenance. Once an ENF is filed, the review process proceeds as described in the MEPA regulations.
- **Wetlands Protection Act and Regulations (14)** - Through designation of an ACEC, coastal wetland resource areas are "presumed" to be significant to one or more interests of the Wetlands Protection Act—storm damage prevention, flood control, prevention of pollution, and protection of private or public water supplies, groundwater, wildlife habitat, fisheries, and land containing shellfish (310 CMR 10.24 [5][a]). Other than specific allowances made under the regulations for maintenance dredging for navigational purposes, ecological restoration projects, and certain improvement dredging projects, proposed projects shall have "no adverse effect" on the interests protected by the Wetlands Protection Act (310 CMR 10.24 [5][b]).
- **Waterways (Chapter 91) Regulations (9)** - Chapter 91 regulations prohibit new fill in ACECs (except on previously filled tidelands) and place limits on new structures, such as docks and piers (310 CMR 9.32). Improvement dredging is permissible only for fishery and wildlife enhancement, ecological restoration projects, or the maintenance or restoration of historic navigation channels or turnaround basins consistent with an approved resource management plan. Dredged material disposal is prohibited except

for beach nourishment, dune construction or stabilization, enhancement of fishery and wildlife resources, or ecological restoration projects (310 CMR 9.40).

- **401 Water Quality Certification Regulations (11)** - Activities with large impacts (> 100 cubic yards of dredging) or discharges to Outstanding Resource Waters or other sensitive resources must undergo a 401 review. Projects must be designed to avoid wetlands impacts and to minimize and mitigate any unavoidable impacts.

Forms

Filing with MEPA
Filing a Wetlands Notice of Intent
Filing a Chapter 91 Waterways License
Water Quality Certification Forms

Fees

No additional fees

Contact

ACEC Program Overview (see Contact sidebar)

Additional Resources

301 CMR 12.00: Areas of Critical Environmental Concern
ACEC Program Overview
Massachusetts Areas of Critical Environmental Concern (ACECs) Statewide Map (PDF, 815 KB)
ACEC Designations
ACEC Program Regulatory Summary (PDF, 829 KB)

5. Ocean Sanctuaries Act

Authorities

M.G.L. c. 132A, §§ 12A-16K, 18: Ocean Sanctuaries Act; 301 CMR 27.00: Ocean Sanctuaries; 301 CMR 28.00: Ocean Management Plan Regulations

Jurisdiction

The following five Ocean Sanctuaries are found within Massachusetts waters: Cape Cod, Cape Cod Bay, Cape and Islands, North Shore, and South Essex. These Ocean Sanctuaries include most state waters, with the exception of Mount Hope Bay and an area of Massachusetts Bay from the Lynn/Swampscott border to Brant Rock in Marshfield. The seaward boundary of the sanctuaries is the limit of state waters, generally three miles

offshore. The landward boundary is the mean low water line along the shore—but in all rivers, bays, harbors, and coves, the landward boundary extends to where the distance across the water body narrows to 200 yards, measured at the mean low water lines. The boundaries are statutory and are described at M.G.L. c. 132A, § 13. Official maps of the Ocean Sanctuaries are developed and maintained by the Massachusetts Office of Coastal Zone Management (CZM). CZM may change the landward boundary of an Ocean Sanctuary to extend inward in rivers, bays, harbors, or coves to include environmentally sensitive areas.

Regulated Activities

Activities listed in 301 CMR 27.06 that occur in all or part of an Ocean Sanctuary are subject to jurisdiction. (See the Regulatory Summary below for a list of prohibited and allowed activities, along with activities that are prohibited with exceptions.) In addition, since the five Ocean Sanctuaries are within the Ocean Management Planning Area (pursuant to the Massachusetts Ocean Management Plan Regulations at 301 CMR 28.00), certain activities are also subject to the siting and performance standards of the Massachusetts Ocean Management Plan **(6)**.

Regulatory Summary

The Ocean Sanctuaries Act defines prohibited and allowed activities in Ocean Sanctuaries and requires state agencies to protect these areas from exploitation, development, or activities that would significantly alter or otherwise endanger their ecology or appearance when issuing authorizations for activities subject to jurisdiction. To accomplish this goal, the act prohibits: drilling or removal of gases or oils, commercial advertising where advertising is the primary intent, and incineration of refuse on or in vessels. Activities that are prohibited with certain exceptions include: dumping or discharge of commercial, municipal, domestic, or industrial wastes; drilling or removal of minerals; construction or operation of offshore or floating electric generating stations; and building or laying of structures on the seabed or subsoil. Allowed activities, provided they receive all other necessary authorizations, include shipping and other transient vessel-based activity, fishing and shellfishing, municipal wastewater and sewer discharges, navigational dredging, sand extraction for beach nourishment, temporary educational and scientific activities, and construction and operation of offshore or floating electric generating facilities with specific limitations.

The Massachusetts Ocean Management Plan **(6)** also sets standards for activities in Ocean Sanctuaries by defining Management Areas (i.e., prohibited, wind energy, and multi-use areas) and establishing criteria to protect key components of Massachusetts estuarine and

marine ecosystems, defined as special, sensitive, or unique resources. The ocean plan also provides management guidance for avoiding, minimizing, and mitigating the potential impacts of new activities on existing concentrations of water-dependent uses. The full set of standards for protected resources and uses is contained in 301 CMR 28.04.

CZM has the statutory responsibility for the care, control, and oversight of Ocean Sanctuaries. The Massachusetts Department of Environmental Protection (MassDEP) has the authority to approve a new or modified discharge from a municipal wastewater treatment facility. A new or modified discharge may only be approved by MassDEP if the project includes at least two years of monitoring data and sufficient hydrodynamic modeling, and proof that the standards of approval are met (including no adverse impacts to marine fisheries).

Review Process

There is no separate Ocean Sanctuaries review process. CZM staff comment on Massachusetts Environmental Policy Act (MEPA) **(1)** filings and on MassDEP Chapter 91 **(9)** license applications during the respective public comment periods. Proposals that are below MEPA thresholds are presumed to comply with the Ocean Sanctuaries Act. A project that receives a Chapter 91 License is also presumed to comply with the Ocean Sanctuaries Act. For the review process for ocean dumping of dredged materials in the territorial waters and sanctuaries of the United States (beyond the 3-mile territorial limit of state waters), see the Marine Protection, Research and Sanctuaries Act in the U.S. Army Corps of Engineers section **(10)**.

Forms

No additional forms

Fees

No additional fees

Contact

Contact CZM

Additional Resources

301 CMR 27.00: Ocean Sanctuaries Regulations
Ocean Management Planning Area and the Ocean Sanctuaries (PDF, 3 MB)
Ocean Management Plan Regulations (PDF, 105 KB)

6. Massachusetts Ocean Management Plan

Authorities

M.G.L. c. 21A § 4C: Ocean Management Plan and M.G.L. c. 132A, §§ 12A-16K, 18: Massachusetts Oceans Sanctuary Act as amended by Session Law Acts of 2008, c. 114, and of 2014, c. 259, §§ 28-45; 301 CMR 28.00: Ocean Management Plan Regulations

Jurisdiction

The Ocean Management Planning Area covers the waters and associated submerged lands of the ocean, including the seabed and the soil, lying between a line designated as the "Nearshore Boundary of the Ocean Management Planning Area" and the seaward boundary of the Commonwealth, generally three miles offshore. The boundaries are depicted on the Ocean Management Planning Area map (see link below), prepared by the Massachusetts Office of Coastal Zone Management (CZM) and available on the Massachusetts Ocean Resources Information System.

Regulated Activities

Activities listed in 301 CMR 28.03(2) that occur in all or part of the Ocean Management Planning Area are subject to jurisdiction. These activities include those that trigger the filing of an Environmental Impact Report under the Massachusetts Environmental Policy Act (MEPA). Activities subject to jurisdiction shall comply with particular siting and performance standards.

Regulatory Summary

The Massachusetts Ocean Management Plan (ocean plan) protects critical marine habitat and important water-dependent uses and sets standards for new ocean-based projects in Massachusetts ocean waters. Activities subject to the ocean plan are governed by siting and performance standards that direct development away from mapped areas with important and high value resources and water-dependent uses. The ocean plan sets standards for activities in the Ocean Management Planning Area by defining Management Areas (i.e., prohibited and multi-use areas) and establishing criteria to protect key components of Massachusetts estuarine and marine ecosystems, defined as special, sensitive, or unique resources. Siting and performance standards and other conditions apply to renewable energy, offshore sand for beach nourishment, cables and pipelines, and other uses, activities, and facilities allowed under the ocean plan regulations. The ocean plan also provides management guidance for avoiding, minimizing, and mitigating the potential impacts of new activities on existing concentrations of water-dependent uses,

reinforcing the state's responsibility to balance current and new uses of ocean waters, while protecting ocean habitats and promoting sustainable economic development.

Review Process

The ocean plan's management framework is implemented within the existing regulatory structure, with the relevant agencies coordinating review and approval of proposed ocean projects. On behalf of the Executive Office of Energy and Environmental Affairs, CZM serves as the lead state agency for ocean planning—coordinating and working with other state agencies and regional and federal partners. An interagency team (consisting of CZM and the Department of Environmental Protection's Wetlands and Waterways Program, Department of Fish and Game's Natural Heritage and Endangered Species Program and Division of Marine Fisheries, and MEPA Office) provides coordinated review of projects, including pre-application consultations with project proponents, review of MEPA filings, and individual agency permit and license issuance. Agencies will make findings that specify: any measures required by the project proponent to meet ocean plan requirements, the entity responsible for funding and implementing such measures, and the anticipated implementation schedule to ensure that measures are in place to prevent or avoid impacts. The Oceans Act requires that all agency certificates, licenses, permits, and approvals for proposed projects are consistent with the ocean plan.

Forms

No additional forms

Fees

No additional fees

Contact

Contact CZM

Additional Resources

301 CMR 28.00: Ocean Management Plan Regulations
Massachusetts Ocean Management Plan website
Ocean Management Planning Area (PDF, 5 MB)
Ocean Management Planning Area and the Ocean Sanctuaries (PDF, 3 MB)
Massachusetts Ocean Resources Information System

WATERFRONT AREAS (PORTS, HARBORS, AND TIDELANDS)

Waterfront areas in Massachusetts are regulated to accommodate and promote particular water-dependent uses and public benefits. This section covers:

- **Municipal Harbor Plans (7)** - These plans establish a community's objectives, standards, and policies for guiding public and private use of land and water within state-approved municipal harbor planning districts.
- **Designated Port Areas (8)** - These port areas have been designated by the Commonwealth of Massachusetts to promote and protect water-dependent industrial uses.
- **Public Waterfront Act (Chapter 91) (9)** - The public trust statute protects the public's rights to fish, fowl, and navigate in tidelands, defined as areas below the current or historic high water line and in great ponds and navigable rivers and streams.

For information on regulations that protect waters of the United States for purposes of navigation, see the Rivers and Harbors Act of 1899 administered by the U.S. Army Corps of Engineers (USACE) on page 25 (which is administered as a single permit application under three USACE statutes: Rivers and Harbors Act, Clean Water Act, and Marine Protection, Research, and Sanctuaries Act).

7. Municipal Harbor Plans

Authorities
M.G.L. c. 91: Public Waterfront Act; 310 CMR 9.00: Waterways Regulations; 301 CMR 23.00: Review and Approval of Municipal Harbor Plans

Jurisdiction
The harbor planning area, which is designated by a municipality, and includes all areas relevant to the functional use and management of the harbor or waterway (typically including filled and flowed tidelands)

Regulated Activities
Projects in state-approved municipal harbor planning districts must comply with the provisions of Municipal Harbor Plans (MHPs).

Regulatory Summary

MHPs establish a community's objectives, standards, and policies for guiding public and private use of land and water within a harbor planning area. Through an MHP, a community can develop long-term, municipally based strategies to grow waterfronts in an environmentally sound and economically prosperous manner, while balancing competing uses of the harbor. Plans also enable communities to tailor selected requirements of the state Chapter 91 Waterways regulations to meet local planning objectives and harbor-specific priorities. An implementation program specifies measures, such as financial strategies or legal and institutional agreements, that will govern the public and private use of the harbor and lands. MHPs are developed under Massachusetts Office of Coastal Zone Management (CZM) regulations and implemented under Chapter 91 regulations **(9)**.

An MHP may include a Designated Port Area (DPA) Master Plan, which pertains only to the lands and waters of a DPA **(8)**. In a DPA Master Plan, a municipality may request flexibility for certain use and dimensional standards of the Chapter 91 regulations, provided that DPA interests are protected.

Review Process

Projects in municipal harbor planning districts are reviewed through Massachusetts Department of Environmental Protection (MassDEP) Chapter 91 **(9)** and CZM Federal Consistency Review **(3)** processes to ensure projects meet local planning goals and state environmental policies, and balance private and public interests in tidelands.

Forms

No additional forms for projects proposed in municipal harbor planning districts aside from MassDEP's Chapter 91 application form - Chapter 91 Forms

Fees

No additional fees for projects proposed in municipal harbor planning districts aside from MassDEP's Chapter 91 application fee

Contacts

MassDEP Waterways Program (Chapter 91) (see Contact Information)
CZM Regional Coordinators

Additional Resources

301 CMR 23.00: Review and Approval of Municipal Harbor Plans
310 CMR 9.00: The Massachusetts Waterways Regulation (Chapter 91)
CZM Port and Harbor Planning Program - Municipal Harbor Plans
CZM Port and Harbor Planning Publications
Waterways Program (Chapter 91)

8. Designated Port Areas

Authorities

M.G.L. c. 91: Public Waterfront Act; 310 CMR 9.00: Waterways Regulations; 301 CMR 25.00: Designation of Port Areas; 301 CMR 23.00: Review and Approval of Municipal Harbor Plans

Jurisdiction

Lands and waters within state-designated areas of concentrated water-dependent industrial uses or infrastructure

Regulated Activities

Projects proposed in Designated Port Areas (DPAs) must be water-dependent industrial, supporting, or temporary uses.

Regulatory Summary

DPA policy seeks to promote, preserve, and enhance the capacity of Designated Port Areas to accommodate water-dependent industrial activities and supporting uses. DPAs have been established in Gloucester Inner Harbor, Salem Harbor, Lynn, Mystic River, Chelsea Creek, East Boston, South Boston, Weymouth Fore River, New Bedford-Fairhaven, and Mount Hope Bay. These DPAs have particular physical and operational features important for water-dependent industrial uses, such as commercial fishing and shipping or manufacturing, processing, research, and production activities that require marine transportation or access to water for withdrawal or discharge. DPA boundaries are periodically reviewed by the Massachusetts Office of Coastal Zone Management (CZM) according to the procedures found in 301 CMR 25.00 (Designation of Port Areas).

The DPA regulations work in conjunction with the Chapter 91 Waterways regulations (310 CMR 9.00) **(9)** and the provisions of the Municipal Harbor Plan (MHP) regulations (301 CMR 23.00) **(7)**, governing the review and approval of DPA Master Plans. Under the MHP regulations, municipalities are able to take a comprehensive approach to planning for their DPAs through DPA Master Plans. Chapter 91 regulations limit uses on filled and flowed

tidelands within DPAs to water-dependent industrial uses, a certain amount of supporting commercial or industrial uses, and temporary uses. In a DPA Master Plan, a municipality may request flexibility for certain use and dimensional standards of the Chapter 91 regulations, but must ensure DPA interests are protected.

Review Process

Project proposals are reviewed through the Massachusetts Department of Environmental Protection (MassDEP) Chapter 91 **(9)** and CZM Federal Consistency Review **(3)** processes to ensure that projects meet water-dependent industrial use requirements and state environmental policies, especially avoiding potential use conflicts or preemption of water-dependent-industrial uses.

Forms

No additional forms for projects proposed in DPAs aside from MassDEP's Chapter 91 application form - Chapter 91 Forms

Fees

No additional fees for projects proposed in DPAs, aside from MassDEP's Chapter 91 application fee and any required tidewater displacement/occupation fees

Contacts

MassDEP Waterways Program (Chapter 91) (see Contact Information)
CZM Regional Coordinators

Additional Resources

301 CMR 25.00: Designation of Port Areas
301 CMR 23.00: Review and Approval of Municipal Harbor Plans
310 CMR 9.00: The Massachusetts Waterways Regulation (Chapter 91)
CZM Port and Harbor Planning Program - Designated Port Areas
CZM Port and Harbor Planning Publications
DPA Boundary Maps
Waterways Program (Chapter 91)

9. Public Waterfront Act (Chapter 91)

Authorities

M.G.L. c. 91: Public Waterfront Act; 310 CMR 9.00: Waterways Regulations

Jurisdiction

Tidelands of Massachusetts:

- Flowed tidelands - projects in, on, over, or under tidal areas between the mean high water (MHW) line and the limit of state territorial waters (generally 3 miles from shore);
- Filled tidelands - this includes all filled areas inside Designated Port Areas (DPAs), and outside DPAs, it includes projects up to the first public way or 250 feet from MHW, whichever extends farther inland;[1]
- Certain navigable non-tidal rivers and streams;
- Great Ponds.

For temporary moorings, floats, rafts, and other bottom-anchored structures, an annual Section 10A permit may be obtained from the local harbormaster in lieu of a Chapter 91 license.

Regulated Activities

Dredging, placement of structures, change in use of existing structures, placement of fill, and alteration of existing structures in, under, or over flowed or filled tidelands, great ponds, and certain navigable rivers and streams require a Chapter 91 authorization.

Regulatory Summary

The Division of Wetlands and Waterways within the Massachusetts Department of Environmental Protection (MassDEP) administers the Chapter 91 Waterways Program. Chapter 91 is the Massachusetts public trust statute and protects the public's rights to fish, fowl, and navigate below the current or historic high water line, as well as in great ponds and navigable rivers and streams in Massachusetts—all of which are known as the public trust lands. Waterways regulations promote the preservation of tidelands for water-dependent uses that require direct access to the water. In addition, the regulations seek to

[1]For landlocked tidelands (filled tidelands more than 250 feet from the high water mark and landward of a public way) that file an environmental notification form or environmental impact report, the Secretary of the Executive Office of Energy and Environmental Affairs must issue a public benefit determination, which is typically done during the Massachusetts Environmental Policy Act review process. See 301 CMR 13:00.

ensure that areas within jurisdiction are maintained for public use and enjoyment when privately developed.

Review Process

Projects are reviewed to ensure that they: 1) do not unreasonably interfere with navigation, 2) provide a proper public purpose, 3) do not interfere with public rights or rights of adjacent property owners, 4) will not adversely affect natural resources, and 5) preserve DPAs for water-dependent industrial use.

MassDEP may issue a license (for work on or use of fill or structures in jurisdictional areas) or a permit (for activities of a one-time or short-term nature). Authorizations include: General License Certification (GLC), Simplified, Water-Dependent, or Nonwater-Dependent. The GLC is a self-certification process available for certain small-scale residential structures that comply with the conditions of an existing General License. A Simplified Chapter 91 Waterways License is an expedited process available to applicants for small residential docks, piers, seawalls, and bulkheads that meet specific criteria. The term of a Simplified License is 15 years. Water-Dependent Chapter 91 Waterways Licenses cover all new or unauthorized water-dependent use projects that are not eligible for the Simplified License. All new or unauthorized nonwater-dependent uses must obtain a Nonwater-Dependent Chapter 91 Waterways License. The term of these licenses is typically 30 years. Work not involving fill or structures, such as dredging, may be authorized through a Chapter 91 Waterways Permit. The term of a permit may be 5-10 years. A combined permit application for Chapter 91 and 401 Water Quality Certification **(11)** is also available.

The applicant must provide MassDEP with the proposed project location, type of project, project plans, information about other applicable state permits, a certification that the project does not violate municipal zoning, and proof of notification to relevant municipal authorities (e.g., select board, planning board, conservation commission). Projects are subject to a 30-day public comment period advertised in a newspaper of general circulation, and certain projects require publication in the *Environmental Monitor*. Nonwater-dependent projects also require a public hearing. MassDEP licensing decisions are subject to a 21-day appeal period. The Chapter 91 License must be recorded at the Registry of Deeds with the property's chain of title within 60 days of issuance or the license becomes invalid.

Forms

Chapter 91 Forms

Fees

Application fees range from $75 to $3,350 depending on the application type. See the Schedule of Permit Application Fees and Timelines (PDF, 741 KB) for details.

Tidewater Displacement Fees and Occupation Fees are project-specific and vary based on the location and size of fill and structures.

Contact

MassDEP Waterways Program (Chapter 91) (see Contact Information)

Additional Resources

M.G.L. Chapter 91

310 CMR 9.00: Waterways Regulations

Chapter 91, The Massachusetts Public Waterfront Act

WATER QUALITY

The Federal Water Pollution Control Act of 1948, which was the first major national water pollution law, was amended in 1972 and became commonly known as the Clean Water Act. The Clean Water Act establishes the basic structure for regulating discharges of pollutants into the waters of the United States and for maintaining standards for surface water quality. The Massachusetts Clean Waters Act works in parallel with the federal statute to maintain water quality standards and protect resources. This section describes the following Clean Water Act permits and programs:

- **U.S. Army Corps of Engineers (USACE) Regulations (10)** - These regulations protect the waters of the United States under the Clean Water Act, as well as under the related Marine Protection, Research, and Sanctuaries Act. USACE also has jurisdiction under the Rivers and Harbor Act to protect waters of the United States for purposes of navigation (this information is included with water quality because the three statutes are administered through a single permit application).
- **401 Water Quality Certification (11)** - Through this program, states are authorized to review federal projects or federal permits that propose dredge, fill, or excavation in wetlands and waters to ensure they do not violate Massachusetts Surface Water Quality Standards.
- **National Pollution Discharge Elimination System (NPDES) (12)** - This federal permit process addresses point sources of pollution, such as from wastewater treatment plants, industrial facilities, and stormwater systems. Under the Massachusetts Clean Waters Act, the state also regulates the discharge of pollutants to surface waters of the Commonwealth.
- **Stormwater Construction General Permit (13)** - This federal permit authorizes the discharge of stormwater from regulated construction sites and requires the implementation of stormwater controls and development of a Stormwater Pollution Prevention Plan.

10. U.S. Army Corps of Engineers Permits

The regulations listed below are administered together by the U.S. Army Corps of Engineers (USACE) Regulatory Branch (under Regulations: 33 CFR 320-330) through a single permit application.

RIVERS AND HARBORS ACT OF 1899 (SECTION 10)

Authorities: 33 U.S.C. §§ 401-413: Rivers and Harbors Act of 1899; 33 CFR 322: Permits for Structures or Work in or Affecting Navigable Waters of the United States

Jurisdiction: Work and the construction/placement of structures in, below, or above navigable waters, including dredging and removal of some facilities and maintenance activities; this applies to areas waterward of mean high water

CLEAN WATER ACT (SECTION 404)

Authorities: 33 U.S.C. § 1251 *et seq.*: Federal Water Pollution Control Act; 33 FCR 323: Permits for Discharges of Dredged or Fill Material into the Waters of the United States

Jurisdiction: Discharge of dredged or fill material into waters of the United States, which include navigable waters and lakes, rivers, streams, and wetlands. For tidal waters, the jurisdictional limit is waterward of the high tide line; in other waters, it is waterward of the ordinary high water mark; in wetlands, it is the entire wetlands.

MARINE PROTECTION, RESEARCH AND SANCTUARIES ACT (SECTION 103)

Authorities: 33 U.S.C. § 1401 *et seq.*: Marine Protection, Research and Sanctuaries Act; 33 CFR 324: Permits for Ocean Dumping of Dredged Material

Jurisdiction: Transportation of dredged material for the purpose of disposal in ocean waters

Regulated Activities

Any project falling under the above categories requires a permit and must comply with the conditions of the Massachusetts General Permit or, in the case of larger projects, the conditions of an Individual Permit.

Regulatory Summary

The New England District of USACE has issued a General Permit that covers 23 activities with minimal environmental impacts that are allowed with conditions (such as eligible maintenance activities, moorings, piers and floats, dredging projects, shoreline stabilization structures, and survey activities). Depending on the activity and criteria within the General

Permit, an applicant may be able to comply by sending a self-verification notice to USACE, or may need to submit an application to determine if the project qualifies for a General Permit (as described below). An Individual Permit is required when a project has more than minimal individual or cumulative impacts. An Individual Permit involves a more comprehensive review and public notice process, including consideration of impacts on the environment, navigation, the economy, and other factors. Applicants are encouraged to contact USACE to determine which permit and process is required.

USACE provides for three levels of regulatory review:

- **Self Verification** - Activities of minimal environmental impact that do not require USACE regulatory review are classified as self-reporting. Written notification to USACE on a form found within the General Permit is required, and projects must comply with the conditions contained in the General Permit. USACE will provide an acknowledgment of receipt after they have reviewed the application for accuracy and completeness. No additional coordination or review is required.
- **Preconstruction Notification (PCN)** - For activities that do not qualify for Self Verification or that are listed in the General Permit as requiring a PCN, the applicant must submit a PCN to obtain written verification from USACE before starting work. PCNs are reviewed through an interagency consultation process that includes the Massachusetts Office of Coastal Zone Management (CZM), U.S. Environmental Protection Agency, Massachusetts Department of Environmental Protection (MassDEP), U.S. Fish and Wildlife Service, and National Oceanic and Atmospheric Administration. An application must be filed, and the response determines whether the PCN activity qualifies for authorization under the General Permit or whether additional information or an Individual Permit is required.
- **Individual Permits** - Activities that have the potential to cause more than minimal adverse environmental impacts must file for an Individual Permit from USACE. These projects require more detailed, project-specific review, interagency coordination, and a public notice process, and may require preparation of an Environmental Impact Statement.

Review Process

Applicants are encouraged to review the U.S. Army Corps of Engineers Regulatory/ Permitting Division page and the Guide for Permit Applicants (PDF, 2 MB) to find information on the application and review process, public notice requirements, and other permit information. Neither a General Permit or Individual Permit is valid until MassDEP issues a 401 Water Quality Certification **(11)** and CZM concurs that the project is consistent with state coastal policies under Federal Consistency Review **(3)**.

Forms

For a Self Verification, the Self Verification Form (PDF, 49 KB) must be submitted with plans.

For a Preconstruction Notification and Individual Permit, an ENG Form 4345 (PDF, 912 KB) is required, along with plans and additional information outlined in the General Permits for Massachusetts (PDF, 567 KB).

Fees

General Permits - None

Individual Permits, Commercial Activity - $100

Contact

USACE New England District, Regulatory/Permitting Division

Additional Resources

33 CFR 322 - Permits for Structures or Work in or Affecting Navigable Waters of the United States

33 CFR 323 - Permits for Discharges of Dredged or Fill Material into Waters of the United States

33 CFR 324 - Permits for Ocean Dumping of Dredged Material

USACE Regulatory/Permitting Division

Department of the Army General Permits for the Commonwealth of Massachusetts (PDF, 567 KB)

11. 401 Water Quality Certification (for Dredging and Fill/Excavation)

Authorities

33 U.S.C. 1251 *et seq.*, § 401: Federal Water Pollution Control Act, M.G.L. c. 21, §§ 26-53: Massachusetts Clean Waters Act; 314 CMR 4.00: Surface Water Quality Standards, 314 CMR 9.00: 401 Water Quality Certification

Jurisdiction

Waters and wetlands subject to state and federal jurisdiction

Regulated Activities

Any activity that requires federal licenses or permits by the U.S. Army Corps of Engineers (USACE), Federal Energy Regulatory Commission, or other federal agency and results in a

discharge of dredged material, dredging, or dredged material disposal greater than 100 cubic yards to waters subject to regulation (including submerged land or salt marshes, or projects that may impact rare species) is subject to 401 Water Quality Certification review.

Regulatory Summary

The authority to administer the 401 Water Quality Certification is derived from the federal Clean Water Act. It gives states the authority to review projects that result in a discharge of dredged material or fill, dredging, and dredged material reuse or disposal in waters of the United States, including wetlands. The Wetlands and Waterways Program of the Massachusetts Department of Environmental Protection (MassDEP) administers the 401 Water Quality Certification Program. The 401 review ensures that a proposed dredge, fill, or excavation project will not result in a violation of the Massachusetts Surface Water Quality Standards, and otherwise avoids or minimizes individual and cumulative impacts to waters of the United States (which includes adjacent wetlands) within the Commonwealth. Only projects that require a federal license or permit are subject to 401 review.

Review Process

There are three categories of water quality certifications for dredging projects: Major Projects (5,000 cubic yards of dredging or more), Minor Project (less than 5,000 cubic yards of dredging), and Amendments of Certification for Dredging.

In addition, there are two categories of water quality certifications for fill/excavation projects.

Major Fill/Excavation Projects include:

- A cumulative loss of more than 5,000 square feet of bordering and isolated vegetated wetland and land under water;
- Discharges of dredged or fill material (including the “redeposit of dredged or excavated material”) of any amount to any Outstanding Resource Water (314 CMR 4.00), isolated vegetated wetlands classified as rare species habitat, or salt marsh; or
- Any activity subject to an individual Section 404 permit under the federal Clean Water Act.

Minor Fill/Excavation Projects include a loss of 5,000 square feet or less of wetland resource areas, as well as certain maintenance activities and agriculture projects. Certain exemptions exist for activities, such as beach nourishment, ecological restoration projects, and projects that are temporary and necessary for planning and design.

If proposed projects include the discharge of dredged or fill material to or dredging within an Outstanding Resource Water, the applicant must publish a public notice in the *Environmental Monitor*, and copies of the public notice must be sent to MassDEP. Written comments on the application are accepted by MassDEP for 21 days. MassDEP may condition the 401 Water Quality Certification to ensure that state surface waters are not harmed by the project.

For certain categories of projects, the final Order of Conditions or final Restoration Order of Conditions (for ecological restoration projects), issued pursuant to 310 CMR 10.00 (Wetlands Protection Act Regulations) **(14)**, serves as the Water Quality Certification for a project. A combined permit application for Chapter 91 and 401 Water Quality Certification is also available. Other projects will need to file for an individual 401 Water Quality Certification as described above.

For some federal General Permits, including the USACE General Permit **(10)**, MassDEP issues a general Water Quality Certification. Activities that comply with the Self Verification or Preconstruction Notification criteria and meet the conditions of the General Permit are considered 401 certified.

Forms

Water Quality Certification Forms
Application Form for WW 07, 08, 09 (Dredging) (PDF, 35 KB)
Application Form for WW 10, 11 (Fill and Excavation) (PDF, 115 KB)

Fees

Major Dredging Project Certification: $490
Minor Dredging Project Certification: $95
Major Fill/Excavation Project Certification: $490
Minor Fill/Excavation Project Certification: $95
Check the Schedule of Permit Application Fees and Timelines (PDF, 741 KB) for additional information and updates.

Contact

MassDEP Water Quality Certification Forms (contact information is found under the specific application type)
MassDEP Regional Office by Community

Additional Resources

314 CMR 4.00: Surface Water Quality Standards
314 CMR 9.00: 401 Water Quality Certification
WW 07, 08, 09: Water Quality Certifications, Dredging Projects
WW 10, 11: Major/Minor Fill and Excavation Projects

12. National Pollution Discharge Elimination System

Authorities

33 U.S.C. § 1251 *et seq.*: Federal Water Pollution Control Act; 40 CFR 122: EPA Administered Permit Programs: National Pollution Discharge Elimination System; M.G.L. Ch. 21 § 26-53: Massachusetts Clean Waters Act; 314 CMR 3.00: Massachusetts Surface Water Discharge Permit Program; 314 CMR 4.00: Massachusetts Surface Water Quality Standards

Jurisdiction

Discharges to the waters of the United States

Regulated Activities

Domestic, industrial, and commercial discharges of wastewater or stormwater to surface waters are subject to permit requirements under the National Pollution Discharge Elimination System (NPDES) Program and the Massachusetts Surface Water Discharge (SWD) Program.

Regulatory Summary

The U.S. Environmental Protection Agency (EPA) administers the NPDES Program, while the Massachusetts Department of Environmental Protection (MassDEP) administers the SWD Program for Massachusetts. As a result, two separate permits are concurrently issued: a NPDES permit by EPA and a SWD permit by MassDEP. Both programs control water pollution by regulating point sources that discharge pollutants to surface waters. More specifically, the NPDES Program, authorized by the federal Clean Water Act, requires a permit for point sources of pollutants that are discharged to the waters of the United States. These permits regulate discharge with the goals of: 1) protecting public health and aquatic life and 2) assuring that every facility treats wastewater. The SWD Program, authorized under the Massachusetts Clean Waters Act, protects the public health, welfare, and the environment through the control of industrial and non-industrial discharges to surface waters of the Commonwealth. Both the NPDES and the SWD permits include site-specific effluent limits and monitoring and reporting requirements.

Point source discharges are any discernible, confined, and discrete conveyance, such as a pipe, ditch, channel, tunnel, conduit, or container. Regulated pollutants include sanitary waste, toxic pollutants, and non-conventional pollutants, including nutrients (such as nitrogen and phosphorus). Other pollutants may be monitored without having an effluent limit. Industrial, commercial, or municipal/government facilities may need more than one NPDES permit since stormwater and wastewater are sometimes regulated by separate permits.

Review Process

Discharges from a point source into the waters of the United States may require an individual NPDES permit from EPA. An Individual Permit is specifically tailored to an individual discharger or facility—based on the information contained in the permit application (e.g., type of activity, nature of discharge, and receiving water quality). The permit is issued for a specific time period (not to exceed five years).

General Permits have been developed by EPA to regulate and cover multiple dischargers with similar operations and types of discharges, including: 1) stormwater discharges from eligible small municipal separate storm sewer systems (MS4s); 2) stormwater discharges from certain industrial activities, including boat maintenance services at marinas and boatyards, under a Multi-Sector General Permit (MSGP); 3) discharges from hydroelectric generating facilities; 4) discharges from aquaculture facilities; 5) discharges from small wastewater treatment facilities; 6) discharges from remediation and dewatering sites; 7) pesticide use; and 8) discharges from active construction (see section **[13]** for Construction General Permits). For the entire list, see EPA's Massachusetts NPDES Permits page. An initial contact with EPA's Water Permits Division to determine applicable permits is recommended.

The MS4 General Permit covers MS4s (municipalities with storm drain systems) that submit a Notice of Intent for permit coverage, develop a stormwater management program (SWMP), and obtain written authorization from EPA. The SWMP describes the stormwater control practices that will be implemented to minimize the discharge of pollutants from the storm sewer system.

For marinas and boatyards, the MSGP will typically cover stormwater potentially contaminated by boat maintenance and equipment cleaning activities, materials storage areas, engine maintenance and repair areas, material handling areas, and dry-dock activities. An individual NPDES permit must be obtained if the marina discharges pressure

wash water, bilge and ballast water, sanitary wastes, or vessel cooling water into the waters of the United States.

When filing with EPA, applicants must also file the appropriate application with MassDEP. Each agency is responsible for the enforcement of their separately issued permits. Permits are issued for up to five years and are renewable. Operators and uses must comply with the general requirements of the NPDES and SWD permits, whether an Individual or a General Permit, including limits on what can be discharged, monitoring and reporting requirements, and other provisions. NPDES permits are not valid until EPA has received a 401 Water Quality Certification **(11)** from MassDEP and concurrence from the Massachusetts Office of Coastal Zone Management that the project is consistent with state coastal policies **(3)**.

Forms

- Coverage under a General Permit requires submittal of a Notice of Intent to EPA (and may require application to MassDEP, depending on the circumstances and the particular General Permit under which coverage is sought).
- Individual Permits (not covered under a General Permit) require submittal of applications to both EPA Region 1 and MassDEP, as described on the EPA NPDES Permit Forms & Attachments and Surface Water Discharge (NPDES) Individual Permit Application pages.

Fees

Individual Permits issued by MassDEP require an application fee and annual compliance fee for non-municipal dischargers. Some General Permits also require an application fee for non-municipal dischargers. See the Schedule of Permit Application Fees and Timelines (PDF, 741 KB) for details.

Contacts

EPA: Massachusetts NPDES Permits (see permit specific contact information)
MassDEP Surface Water Discharge Permitting (NPDES) (see Contact)

Additional Resources

40 CFR 122: EPA Administered Permit Programs: National Pollution Discharge Elimination System
314 CMR 3.00: Massachusetts Surface Water Discharge Permit Program
314 CMR 4.00: Surface Water Quality Standards
EPA National Pollutant Discharge Elimination System (NPDES)

MassDEP Surface Water Discharge Permitting (NPDES)
NPDES Permits: What You Need to Know

13. Stormwater Construction General Permit

Authorities
33 U.S.C. § 1251 *et seq.*: Federal Water Pollution Control Act; 40 CFR 122: EPA Administered Permit Programs: National Pollution Discharge Elimination System

Jurisdiction
Discharges to Waters of the United States

Regulated Activities
Operators of large and small construction activities must comply with National Pollutant Discharge Elimination System (NPDES) Stormwater Construction General Permit requirements. A large construction activity is generally one that will disturb five or more acres of land. A small construction activity will disturb one or more, but less than five, acres of land.

Regulatory Summary
Under the NPDES provisions of the Clean Water Act, the U.S. Environmental Protection Agency (EPA) regulates point sources of pollutants that are discharged to waters of the United States, including stormwater discharges from construction activities. (The two other regulated sources of stormwater discharges, municipal separate storm sewer systems and industrial activities, are discussed in the NPDES section **[12]**). A Stormwater Construction General Permit authorizes the discharge of stormwater from regulated construction sites and requires the implementation of stormwater controls and development of a Stormwater Pollution Prevention Plan (SWPPP) to minimize pollutants discharged in stormwater runoff.

Review Process
Construction projects that propose the alteration of one acre or more of land (or less than one acre but are part of a common plan that ultimately disturbs one or more acres of land) must receive authorization under the NPDES Stormwater Construction General Permit prior to construction. To obtain coverage under this General Permit, the project proponent must submit a Notice of Intent (NOI) to EPA with information about the site and the proposed discharge. The proponent must also develop and implement a SWPPP prior to filing the NOI, which includes details about construction activities, erosion control measures, and inspection schedules to be implemented during construction to prevent adverse impact on

wetlands and waterways. Since the Construction General Permit is administered solely by EPA, a separate application is not required by the Massachusetts Department of Environmental Protection (MassDEP), unless the project involves discharge to Outstanding Resource Waters (ORW). For projects with discharges to ORWs, separate approval by MassDEP is required.

Forms

Submitting a Notice of Intent (NOI), Notice of Termination (NOT), or Low Erosivity Waiver (LEW) Under the Construction General Permit

MassDEP WM15 (NPDES General Permit Notice of Intent) for Discharges to ORWs

Fees

Discharges to ORWs require an application fee for non-municipal dischargers. See the Schedule of Permit Application Fees and Timelines (PDF, 741 KB) for details.

Contact

Contact Us: Stormwater

Additional Resources

40 CFR 122: EPA Administered Permit Programs: National Pollution Discharge Elimination System

EPA's Stormwater Discharges from Construction Activities

Construction General Permit (CGP) Frequent Questions

WETLANDS AND FLOODPLAINS

Wetlands (including floodplains) are given substantial protection because of their importance to water quality, reduction of storm damage and flooding, and wildlife and fisheries habitat. Floodplains are also managed through separate requirements to prevent or reduce the risk of flooding and build more resilient communities. The wetlands and floodplains requirements covered in this section are:

- **Wetlands Protection Act (WPA) and Rivers Protection Act (14)** - These state programs regulate work within or near wetland resource areas, such as land under the water, coastal banks, dunes, barrier beaches, and land subject to coastal storm flowage (coastal floodplains), as well as work that impacts river systems.
- **Coastal and Inland Wetlands Restrictions (15)** - Selected Massachusetts wetlands receive additional protection through these permanent restriction orders that prohibit certain activities.
- **National Flood Insurance Program Floodplain Requirements (16)** - The Federal Emergency Management Agency (FEMA) National Flood Insurance Program (NFIP) requires participating communities to adopt FEMA flood maps and enforce NFIP floodplain management measures to reduce flood losses. Development and alteration of floodplains must conform to and be consistent with the minimum NFIP regulations and with any higher standards found in state or local codes, such as the state building code **(24)**.

See the Water Quality section for several other permits that protect wetlands, including U.S. Army Corp of Engineers permits **(10)**, 401 Water Quality Certification **(11)**, and National Pollutant Discharge Elimination System permits **(12)**.

14. Massachusetts Wetlands Protection Act and Rivers Protection Act

Authorities

M.G.L. c. 131, § 40: Massachusetts Wetlands Protection Act (WPA); Chapter 258 of the Acts of 1996: An Act Providing Protection for the Rivers of the Commonwealth; 310 CMR 10.00: Wetlands Protection Act Regulations

Jurisdiction

Any wetland resource area in Massachusetts, including:

- Any bank, freshwater wetland, coastal wetland, beach, dune, tidal flat, marsh or

swamp bordering on the ocean, estuary, creek, river, stream, pond, and lake;
- Land under any of the water bodies listed;
- Land subject to tidal action, coastal storm flowage, or flooding; and
- Riverfront areas.

Coastal wetland resources also include the land under the ocean, coastal banks, barrier beaches, rocky intertidal areas, salt marshes, land under salt ponds, Designated Port Areas, land containing shellfish, and land on the banks of fish runs. In addition, a 100-foot buffer zone that applies to certain wetland resource areas is subject to jurisdiction. This buffer zone includes the land that borders the bank of a water body and any freshwater or coastal resource area listed in the first bullet above.

Regulated Activities

Any construction or alteration in or near a wetland resource is subject to the Wetlands Protection Act (WPA). The wetlands regulations also establish procedures and performance standards for most wetland resource areas.

Regulatory Summary

Local Conservation Commissions and the Massachusetts Department of Environmental Protection (MassDEP) Wetlands Program administer the WPA through 310 CMR 10:00, the Wetlands Protection Act Regulations. The purpose of the WPA and regulations are to protect Massachusetts wetland resources and maintain their beneficial functions for the citizens of the Commonwealth. These public interests include the protection of public and private water supplies, groundwater supplies, wildlife and fisheries habitat, and land containing shellfish; pollution prevention; and flood control and storm damage prevention.

Any activity proposed or undertaken that will remove, fill, dredge, or alter resource areas is subject to regulation and must obtain a permit. The law regulates many types of work, including vegetation removal; regrading; and construction of houses, additions, decks, driveways, and commercial or industrial buildings. Ecological restoration projects that restore or improve the natural capacity and functions of resource areas, such as dam removal, culvert replacement, restoration of rare species habitat, and improvement of fish passage, may be permitted provided they meet specific requirements. Projects that affect wetlands are required to avoid impacts where possible, and minimize and mitigate for unavoidable impacts. Performance standards define the levels of environmental impacts that cannot be exceeded. Stormwater runoff and all point source stormwater discharges from projects within a resource area or buffer zone are subject to Stormwater Management Standards (defined and specified in the Massachusetts Stormwater Handbook). Projects proposed in wetlands

resource areas or in the 100-foot buffer zone must obtain a Determination of Applicability and/or an Order of Conditions from the local Conservation Commission.

Local bylaws, which can be adopted by municipalities and used in tandem with WPA regulations, offer an opportunity for communities to impose stronger protective measures, expand jurisdictional areas (such as for isolated vegetated wetlands or floodplains), specify permit and hearing procedures, and establish filing and consultant fees. Under local bylaws, an applicant is required to obtain a local permit in addition to MassDEP permits.

Review Process

Proponents of projects in wetlands resource areas and their applicable 100-foot buffer zones must submit a Notice of Intent (NOI) to the municipal Conservation Commission and a copy to MassDEP under the WPA and any local wetlands bylaw. (If applicants are unsure whether a proposed work site is in a resource area or whether the work will alter a resource area, they can first apply for and receive a Determination of Applicability or Notice of Non-Significance from the Conservation Commission. An applicant can also confirm resource area boundaries by applying for and receiving an Order of Resource Area Delineation.) The NOI must describe the wetland type, boundaries of resource areas, and the work proposed, and should include supporting plans that are stamped by a professional engineer. (NOIs are often developed with the assistance of a professional consultant familiar with the WPA regulations.) On receipt of the copy of the NOI, the regional office of MassDEP will provide a project number for the proposed activity. The Conservation Commission will set a time for a public hearing on the project that is within 21 calendar days of the receipt of the NOI and will advertise the hearing in the local paper. Once the hearing is completed and closed, the Conservation Commission must issue its decision, known as an Order of Conditions (OOC), within 21 calendar days (any local permit is issued at the same time). A copy of the OOC is also sent to MassDEP at the same time.

Abutters, a group of 10 citizens, MassDEP, or the applicant have 10 business days to appeal the Conservation Commission OOC to MassDEP (appeal requests under a local bylaw go to Superior Court). If MassDEP determines the appeal has standing and meets the regulatory requirements, they will issue a Superseding Order of Conditions (SOC) within 70 calendar days of their receipt of the appeal. A MassDEP SOC will either affirm the original Conservation Commission OOC or provide additional conditions or prohibitions to protect the interests of the WPA. (Appeal requests and superseding decisions can also be made on Determinations of Applicability and Orders of Resource Delineation). Once issued, an appeal of a MassDEP superseding decision must go through the Office of Appeals and Dispute Resolution in accordance with 310 CMR 1.00: Adjudicatory Proceedings.

For projects below mean high water or in a fish run, applicants are also required to submit the Notice of Intent application to Division of Marine Fisheries (see Massachusetts Marine Fisheries Regulations **[19]** for details). If any portion of the proposed project is located in Estimated Habitat of Rare Wildlife as indicated on Massachusetts Division of Fisheries & Wildlife's Natural Heritage & Endangered Species Program (NHESP) maps **(17)**, the applicant must also submit a copy of the NOI to NHESP.

For coastal projects, applicants are encouraged to reference *Applying the Massachusetts Coastal Wetlands Regulations: A Practical Manual for Conservation Commissions to Protect the Storm Damage Prevention and Flood Control Functions of Coastal Resource Areas* for guidance on how to avoid these project impacts.

Forms

Wetlands Permitting Forms

Fees

Based on the category of the proposed activity and resources affected (310 CMR 10.03[7]) and the Schedule of Permit Application Fees and Timelines (PDF, 741 KB)

Contact

Local Conservation Commission
MassDEP Wetlands Circuit Rider Program
MassDEP Regional Offices by Community

Additional Resources

M.G.L. c. 131 § 40 Massachusetts Wetlands Protection Act
310 CMR 10: Wetlands Protection Act Regulations
Massachusetts Stormwater Handbook and Stormwater Standards
Wetlands Protection
Wetlands Policy 06-1: Coordinated Review Relating to Endangered Species
Rivers Protection Act Questions & Answers
Wetlands Circuit Rider Program
Interpreting Federal Emergency Management Agency Flood Maps and Studies in the Coastal Zone
Applying the Massachusetts Coastal Wetlands Regulations

15. Wetlands Restrictions

Authorities
M.G.L. c. 130, § 105: Protection of Coastal Wetlands (Coastal Wetlands Restriction Act); M.G.L. c. 131, § 40A: Orders Protecting Inland Wetlands (Inland Wetlands Restriction Act); 310 CMR 12.00: Adopting Coastal Wetlands Orders; 310 CMR 13.00: Adopting Inland Wetland Orders

Jurisdiction
Coastal and inland wetlands for which Restriction Orders pursuant to 310 CMR 12.00 and 13.00 have been adopted in the Commonwealth of Massachusetts

Regulated Activities
Alteration of any registered wetlands is prohibited.

Regulatory Summary
The purpose of the Coastal and Inland Wetlands Restriction Acts are to preserve public health, safety and welfare, private property, wildlife, and marine fisheries by the adoption, after suitable public comment, of wetland restriction orders imposing restrictions on wetlands. Regulated activities in restricted wetlands include dredging, filling, removing, otherwise altering, or polluting coastal or inland wetlands. Wetlands restriction orders are recorded at the Registries of Deeds in the counties where the properties are located to inform future landowners of the restriction. While this program is not currently active, a number of restriction orders have been recorded and are still in effect.

Review Process
Proposed alterations to registered wetlands are reviewed by local Conservation Commissions through a Notice of Intent, as described under the Wetlands Protection Act (M.G.L. c. 131, § 40) **(14)**. Approximately 46,000 acres of coastal wetlands have been registered in 42 coastal communities, and 8,000 acres of inland wetlands have been registered in 11 inland communities. The cities and towns with registered wetlands are listed in Communities with Previously Registered Wetlands (PDF, 139 KB). Affected municipalities also have copies of the community's restricted wetlands plans and restriction orders.

Forms
WPA Form 3: Wetlands Notice of Intent

Fees

Based on the category of the proposed activity and resources affected (310 CMR 10.03[7]) and the Schedule of Permit Application Fees and Timelines (PDF, 741 KB)

Contact

Massachusetts Department of Environmental Protection (MassDEP) Wetlands Circuit Rider Program

MassDEP Regional Office by Community

Additional Resources

M.G.L. c. 130 § 105: Coastal Wetlands Restriction Act

M.G.L. c. 131 § 40A: Inland Wetlands Restriction Act

310 CMR 12.00: Adopting Coastal Wetlands Orders

310 CMR 13.00: Adopting Inland Wetland Orders

Protecting Wetlands in Massachusetts - Wetlands Restrictions

MassDEP's Wetlands Circuit Rider Program

16. National Flood Insurance Program Floodplain Requirements

Authority

Title 44 of the Code of Federal Regulations (44 CFR)

Jurisdiction

Floodplains in the Commonwealth of Massachusetts, which are defined as areas subject to inundation by the 1%-chance flood (also known as the 100-year flood) as delineated on Federal Emergency Management Agency (FEMA) flood maps

Regulated Activities

Development and alteration of floodplains must conform to and be consistent with the minimum National Flood Insurance Program (NFIP) regulations and with any higher standards found in state or local codes.

Regulatory Summary

Through the NFIP, local communities are eligible to receive flood insurance and participate in federal hazard mitigation grant programs once they adopt and enforce NFIP floodplain management regulations, which are designed to reduce flood losses. Local communities are also required to have FEMA-approved hazard mitigation plans in order to be eligible for

federal grant assistance. NFIP regulations identify *minimum* requirements that communities must fulfill to join and stay in the NFIP program. This includes adoption and enforcement of the floodplain boundaries, base flood elevations, and flood zones on Flood Insurance Rate Maps (FIRMs). The federal requirements mandate that communities develop local floodplain bylaws or ordinances so that these standards can be enforced locally. Additional restrictions or requirements may also be found in state provisions, such as the State Building Code in 780 CMR **(24)**, Wetlands Protection Act (WPA) Regulations in 310 CMR **(14)**, or other local codes.

The NFIP requirements are primarily administered through the State Building Code, under the authority of the local building inspector. The State Building Code is the primary authority for work that involves construction, demolition, renovation, or change of use of a building in a floodplain. The Building Code references FIRMs and Flood Insurance Studies for a determination of flood zones and base flood elevations. Development in the FEMA-defined floodplain requires minimum construction standards, such as flood-resistant construction and particular elevation criteria for new buildings, additions, and substantial improvement to existing or damaged buildings. Development in these floodplains must also meet standards for non-construction activities, such as filling, grading, paving, or storing equipment.

Any construction or alteration in or near a wetland resource, including floodplains, is also subject to the WPA Regulations, administered by the local Conservation Commission and Massachusetts Department of Environmental Protection (MassDEP). The WPA regulates construction or alterations of coastal floodplains, known as Land Subject to Coastal Storm Flowage. Provisions also exist under Title 5 **(25)**, administered by the local Board of Health and MassDEP, for on-site sewage system treatment in floodplains.

The Massachusetts Water Resources Commission is the state coordinating agency that implements the NFIP. The Water Resources Commission carries out this work through the Massachusetts Department of Conservation and Recreation's (DCR) Flood Hazard Management Program, which offers technical assistance to communities and applicants on floodplain management, flood-resistant construction, floodplain mapping, flood mitigation, flood insurance, and flood risk awareness and education.

Review Process

Project proponents should consult the FIRMs, which can be found at municipal/town halls or online at the FEMA Flood Map Service Center, to determine if the proposed project location is within a floodplain. Projects in the floodplain will need to meet applicable

requirements and review procedures. See the Massachusetts State Building Code **(24)**, WPA **(14)**, and Title 5 **(25)** for specifics on those review processes. Additional requirements under the Massachusetts Environmental Policy Act (MEPA) **(1)** may apply if a state agency action exceeds the MEPA threshold for new or expanded fill or for structures in any floodplain. The Massachusetts Office of Coastal Zone Management's Federal Consistency Review **(3)**, MassDEP's Chapter 91 Regulations **(9)**, Massachusetts and Federal Endangered Species Acts **(17)(18)**, U.S. Code of Federal Regulations, and FEMA requirements and technical guidance may also be applied during project review. Permits or approvals may also be required from other local departments (e.g., Planning Board for land use) and under local bylaws, such as wetland bylaws, which are often more stringent than state standards.

Forms

Contact local municipalities for applicable permit applications.

Fees

See applicable sections.

Additional fees may exist at the local level.

Contact

FEMA Region 1

DCR Floodplain Management Guide (see Contacts)

Additional Resources

Massachusetts State Building Code - 780 CMR

310 CMR 10: Wetlands Protection Act Regulations

Septic Systems & Title 5

DCR Floodplain Management

FEMA Flood Map Service Center

FEMA.gov Flood Insurance

FEMA.gov for Community Officials

FEMA.gov for Homeowners, Renters, and Business Owners

Interpreting Federal Emergency Management Agency Flood Maps and Studies in the Coastal Zone

Who to Contact and What to Do Before Building or Rebuilding (PDF, 1 MB)

PROTECTED SPECIES AND HABITATS

The following state and federal laws and regulations that protect plants, wildlife, fisheries, and habitats are covered in this section:

- **Massachusetts Endangered Species Act (17)** - This program protects state-listed rare species and their habitats by requiring prior review and written approval for projects within mapped habitats.
- **Federal Endangered Species Act (18)** - This law protects federally listed species and their habitats by requiring permits from the U.S. Fish and Wildlife Service (for projects impacting terrestrial and freshwater species) or the National Marine Fisheries Service (NMFS) (for projects impacting marine and anadromous species). *Please note that NMFS, which is within the National Oceanic and Atmospheric Administration (NOAA), is now also called NOAA Fisheries.*
- **Massachusetts Marine Fisheries Regulations (19)** - These regulations ensure that projects in waterways minimize impacts to fin fisheries, shellfisheries, and habitats.
- **Federal Fisheries Regulations (20)** - These regulations require federal agencies who authorize, fund, or undertake an action that may adversely affect essential fish habitat to consult with NMFS.

17. Massachusetts Endangered Species Act

Authorities
M.G.L. c. 131A: Massachusetts Endangered Species Act; 321 CMR 8:00: List of Endangered and Threatened Species; 321 CMR 10:00: Massachusetts Endangered Species Act Regulations

Jurisdiction
Plants and animals in the Commonwealth of Massachusetts that are endangered, threatened, or species of concern, and their habitats

Regulated Activities
Projects or activities within mapped Priority Habitat, as designated by the Massachusetts Division of Fisheries & Wildlife's Natural Heritage & Endangered Species Program (NHESP), require prior review and written approval. Certain projects or activities may require a Conservation and Management Permit. Permits for plant propagation and nursery sales, scientific and educational use, captive propagation, falconry, and public health reasons are available to qualified entities.

Regulatory Summary

The Massachusetts Endangered Species Act (MESA) and its implementing regulations protect rare species and their habitats by prohibiting the unauthorized take of any plant or animal species listed as Endangered, Threatened, or Special Concern. A take includes harassing, harming, capturing, collecting, processing, and killing protected animals or disrupting their nesting, breeding, feeding, or migratory activities (which may result from the modification, degradation, or destruction of habitat). For plant species, a take includes collecting, picking, killing, transplanting, cutting, or processing protected plants. (See the complete definition of "take" in the regulations.) MESA establishes procedures for the listing and protection of rare plants and animals, outlines project review filing requirements for projects or activities located within mapped Priority Habitat, and provides review timelines and appeals processes for agency actions. A subset of mapped Priority Habitat is Estimated Habitat, which are areas of state-listed rare "wetlands" wildlife (but not plants) protected under both MESA and the Wetlands Protection Act (WPA) **(14)**.

Review Process

If a project or activity is proposed in mapped Priority Habitat, as delineated in the Massachusetts Natural Heritage Atlas, a MESA Project Review Checklist must be submitted to NHESP for review prior to initiation of the project or activity. For a project or activity proposed within both Priority Habitat and Estimated Habitat, NHESP must review the project under both MESA and the WPA. NHESP and the Massachusetts Department of Environmental Protection have developed a Streamlined Notice of Intent process for these project reviews. Some projects, such as maintenance, repair, or replacement activities, may be exempt from the MESA review provisions (321 CMR 10.14).

NHESP will review the checklist and provide a letter within 30 days with its determination of whether the filing is complete and whether the proposed project or activity will negatively impact state-listed species or their habitats. If NHESP finds no potential negative impacts, then the project may proceed. In some cases, projects will be required to implement certain conditions, such as timing restrictions, to avoid impacts. Projects that are found to negatively impact state-listed species or their habitats must either be revised to avoid such impacts or will require a Conservation and Management Permit before moving forward. This permit is issued if the project or activity meets several performance standards, including development of an alternatives analysis to avoid and minimize impacts, proof that an insignificant portion of the local population would be impacted by the project, and commitment to a Conservation and Management Plan that provides a long-term net benefit to the conservation of the state-listed species.

NHESP offers free pre-filing consultations to provide guidance on proposed projects early in their conceptual design stage. For federally listed species, the applicant must also comply with the requirements of the Federal Endangered Species Act **(18)**, administered by the U.S. Fish and Wildlife Service.

Forms

MESA Project Review Checklist (PDF, 244 KB)
Streamlined Notice of Intent Form
Apply for a Conservation & Management Permit

Fees

Information Request - $50; none for non-profits
MESA Project Reviews - ranging from $300 to $4,000
MESA Conservation & Management Permits - ranging from $600 to $7,500

Contact

NHESP Contacts

Additional Resources

321 CMR 10.00: Massachusetts Endangered Species Act
Massachusetts Endangered Species Act Overview
MA Endangered Species Act (MESA) Regulatory Review
How to file for MESA project review
Priority and Estimated Habitat Maps

18. Federal Endangered Species Act

Authorities

16 U.S.C. § 1531 *et seq.*: Endangered Species Act of 1973; 50 CFR 17.00: Endangered Species and Threatened Wildlife and Plants

Jurisdiction

Plants and wildlife of the United States that are on the federal lists of threatened and endangered plants and wildlife

Regulated Activities

Any action that may affect a species listed under the Federal Endangered Species Act (ESA), or may affect critical habitat designated under the ESA, requires coordination with the U.S.

Fish and Wildlife Service (USFWS) or the National Marine Fisheries Service (NMFS). *Please note that NMFS, which is within the National Oceanic and Atmospheric Administration (NOAA), is now also called NOAA Fisheries.* Take of ESA listed species, including take that is unintentional and incidental to an otherwise lawful activity, is prohibited by the ESA (exemptions can be obtained through Section 7 or Section 10). With certain exceptions, the USFWS has jurisdiction over ESA listed species on land and in freshwater, while NMFS has jurisdiction over marine and anadromous species.

Regulatory Summary

The federal Endangered Species Act (ESA) conserves endangered and threatened species and the ecosystems on which they depend. Species are protected under the ESA as either endangered (species in danger of extinction throughout all or a significant portion of its range) or threatened (species likely to become endangered within the foreseeable future). USFWS and NMFS jointly administer the law.

Section 7 of the ESA requires federal agencies to consult with USFWS/NMFS when undertaking, funding, permitting, or authorizing actions that "may affect" listed species to ensure that such actions are not likely to jeopardize the continued existence of listed species or destroy or adversely modify designated critical habitat.

Section 10 of the ESA provides for the issuance of permits for the take of threatened and endangered species. Permits may be issued for scientific purposes, enhancement of survival and propagation, or incidental take resulting from otherwise lawful activities.

The federal program coordinates with the Massachusetts Division of Fisheries & Wildlife's Natural Heritage Endangered Species Program in administering the Massachusetts Endangered Species Act **(17)**.

Review Process

Under Section 7, federal agencies and project proponents are encouraged to coordinate with the USFWS/NMFS early in the review process to develop methods to address the conservation needs of listed species before the proposed actions are fully designed. If USFWS/NMFS provides written concurrence that proposed activities are not likely to adversely affect listed species and/or designated critical habitat, no further consultation is required. If adverse effects are likely, then formal consultation procedures must be initiated. Under formal consultation, the USFWS/NMFS works with the federal action agency and project proponent to analyze effects to listed species and designated critical habitat and to develop conservation measures to avoid, minimize, and offset adverse

effects to ensure that the proposed project or action will not appreciably reduce the likelihood of survival and recovery of ESA-listed species. Upon conclusion of formal consultation, USFWS/NMFS will issue a biological opinion that includes required measures to minimize the effects of take (including monitoring and reporting), as well as voluntary Conservation Recommendations.

Under Section 10, USFWS and NMFS issue three basic types of permits for the protection of endangered and threatened species:

- **Incidental Take Permits** - Issued for activities that may result in the incidental take (i.e., to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to significantly impact its habitat) of endangered or threatened animal species, and must be accompanied by a Habitat Conservation Plan.
- **Enhancement of Survival Permits** - Issued to landowners who agree to take actions that benefit species and who enter voluntary agreements, such as Safe Harbor Agreements or Candidate Conservation Agreements with Assurances.
- **Recovery Permits and Interstate Commerce Permits** (USFWS) and **Scientific Research and Enhancement Permits** (NMFS) - Allows for take as part of activities intended to foster the recovery of listed species, including Recovery Permits (USFWS) and Scientific Research and Enhancement Permits (NMFS), or Interstate Commerce Permits (USFWS) for transport and sale of listed species across state lines.

Forms

Do I Need a Permit (USFWS)
Permits: Protected Resources (NMFS)
Most USFWS permits are issued by the regional office where the activity will take place, with the exception of Interstate Commerce permits.

Fees

Typically range from $50 for Enhancement of Survival Permits to $100 for Recovery Permits, Scientific Research and Enhancement Permits, and Interstate Commerce Permits

Contact

USFWS Endangered Species National and Regional Contacts
NMFS Greater Atlantic Section 7 Team and Office of Protected Resources

Additional Resources

50 CFR 17.00: Endangered Species and Threatened Wildlife and Plants

U.S. Fish & Wildlife Service

- Endangered Species
- USFWS Northeast Region Headquarters
- New England Ecological Services Field Office
- New England Field Office ESA Project Review Documents
- Permits for Native Endangered and Threatened Species
- IPaC - Information for Planning and Consultation

National Marine Fisheries Service (also known as NOAA Fisheries)

- Understanding Permits and Authorizations for Protected Species
- Endangered Species Act Consultations
- Endangered Species Conservation
- New England/Mid-Atlantic Protected Marine Life Overview

19. Massachusetts Marine Fisheries Regulations

Authorities

M.G.L. c. 130: Marine Fisheries; 322 CMR: Marine Fisheries Regulations

Jurisdiction

Commercial and recreational fin fisheries and shellfisheries within the Massachusetts territorial sea and in Nantucket Sound

Regulated Activities

Projects in waterways must minimize impacts to finfisheries and shellfisheries and marine resources and habitats.

Regulatory Summary

The Division of Marine Fisheries (DMF) licenses and oversees fin fisheries and shellfisheries in Massachusetts waters, both for resident species and those that spend a portion of their lifecycle in the state's tidal waters. Responsibilities include administration of marine fisheries laws, assessment and enhancement of the biological integrity of marine fishes and fisheries important to the Commonwealth, and cooperation with state, federal, and international agencies to accomplish these goals. Regulatory activities are conducted in coordination with the federal fisheries regulations of the National Marine Fisheries Service **(20)** and the Atlantic States Marine Fisheries Commission.

Review Process

DMF primarily reviews eight categories of projects and activities: docks and piers; dredging and dredge material disposal; fill projects (revetments, bulkheads, ramps, highway projects); beach nourishment; harbor development and wastewater planning; cables and pipelines; renewable energy (wind mills, tidal power); and aquaculture.

DMF reviews and provides comments on copies of Wetlands Protection Act (WPA) Notices of Intent **(14)**, Massachusetts Department of Environmental Protection's Chapter 91 **(9)** and 401 applications **(11)**, Massachusetts Environmental Policy Act documents **(1)**, and U.S. Army Corps of Engineers filings **(10)**, where these projects have the potential to impact fin fisheries and shellfisheries or their habitats. If relevant, DMF biologists work with state, federal, and local agencies and applicants to: review project proposals; design directed surveys; submit formal recommendations for the avoidance, minimization, and mitigation of impacts; avoid and minimize impacts through project modifications, sequencing, and time-of-year restrictions; and recommend options for compensatory mitigation or habitat restoration for unavoidable impacts to protect resources, such as spawning fish, shellfish beds, and areas of Submerged Aquatic Vegetation (SAV). (SAV maps can be located at MassGIS Data: MassDEP Eelgrass Mapping Project.) DMF's recommendations and conditions are typically incorporated into the relevant permits, licenses, or documents, such as the 401 Water Quality Certification or WPA Order of Conditions.

Forms

No additional forms

Fees

No additional fees

Contacts

See contacts on the Review of Coastal Alteration Projects web page.

Additional Resources

322 CMR: Marine Fisheries Regulations
Massachusetts Division of Marine Fisheries
Fisheries Habitat Restoration and Monitoring
Review of Coastal Alteration Projects

20. Federal Fisheries Regulations

Authorities

16 U.S.C. § 1801 *et seq*.: Magnuson-Stevens Fishery Conservation and Management Act; 50 CFR 600.00: Essential Fish Habitat

Jurisdiction

Habitat of marine, estuarine, and diadromous finfish, mollusks, and crustaceans

Regulated Activities

Federal actions or proposed actions authorized, funded, or undertaken by a federal agency that may adversely affect Essential Fish Habitat (EFH) require an EFH consultation with the National Marine Fisheries Service (NMFS). *Please note that NMFS, which is within the National Oceanic and Atmospheric Administration (NOAA), is now also called NOAA Fisheries.* Consultation is required for renewals, reviews, or substantial revisions of actions that may adversely affect EFH. Private landowners and state agencies are not required to consult with NMFS, but will be provided with conservation recommendations on any state action that would adversely affect EFH.

Regulatory Summary

The 1996 amendments to the Magnuson-Stevens Act strengthened the ability of NMFS and the Fisheries Councils to protect EFH, including the waters and substrates necessary for fish to spawn, breed, feed, or grow to maturity. Habitat for managed species must be identified and adverse effects to EFH minimized. Adverse effect means any impact that reduces quality and/or quantity of EFH, including direct or indirect physical, chemical, or biological alterations of the waters or substrate and loss of, or injury to, benthic organisms, prey species and their habitat, and other ecosystem components. Adverse effects to EFH may result from actions occurring within or outside of EFH and may include site-specific or habitat-wide impacts, including individual or cumulative consequences of actions. NMFS and other federal agencies must coordinate with each other on efforts to preserve and enhance EFH. EFH has been identified for 59 species in New England.

Review Process

When a federal agency authorizes, funds, or undertakes an action that may adversely affect EFH, it should notify NMFS in writing as early as possible. Early coordination helps agencies integrate habitat conservation measures into their plans and may eliminate the need for a full consultation. If a federal agency determines that an action will adversely affect EFH, the agency must submit an EFH Assessment to NMFS, with a description of the action, analysis

of the potential adverse effects, and any proposed mitigation or analysis of alternatives that could avoid or minimize adverse effects on EFH.

Whenever possible, NMFS should have at least 60 days notice prior to a final decision on an action, or at least 90 days if the action would result in substantial adverse impacts. NMFS and the federal agency may agree to use shorter timeframes provided that they allow sufficient time for NMFS to review the EFH Assessment and develop Conservation Recommendations. The federal agency then has 30 days to respond to NMFS with information on how it will proceed with the action. The response must include a description of measures proposed by the agency for avoiding, mitigating, or offsetting the impact of the activity on EFH. If the response is inconsistent with NMFS Conservation Recommendations, the federal agency must explain its reasons for not following the recommendations and provide scientific justification for any disagreements over the anticipated effects of the action and the measures needed to avoid, minimize, mitigate, or offset such effects (this response must be provided at least 10 days prior to final approval of the action).

Generally, federal agencies may incorporate an EFH Assessment into existing interagency coordination processes established under the National Environmental Policy Act **(2)**, the Endangered Species Act **(18)**, the Clean Water Act **(10)**, the Fish and Wildlife Coordination Act, and other applicable federal laws.

Fees
None

Forms
None

Contact
NOAA Fisheries Greater Atlantic Region Habitat and Ecosystem Services Division

Additional Resources
50 CFR 600.00: Essential Fish Habitat
NOAA Fisheries New England/Mid-Atlantic - Habitat Overview
NOAA Fisheries - Habitat Conservation
Essential Fish Habitat
Consultations for Essential Fish Habitat
Greater Atlantic Regional Fisheries Office

ARCHAEOLOGICAL AND HISTORIC RESOURCES

An important component of both state and federal environmental laws is the preservation of archaeological and historic resources. The following requirements are covered in this section:

- **Underwater Archaeological Resources Regulations (21)** - This program safeguards underwater archaeological resources, such as shipwrecks and submerged Native American sites, in coastal and inland waters of Massachusetts.
- **Historic Properties Regulations (22)** - These state and federal requirements govern the review and consultation process to consider and resolve any project-related adverse effects to significant historic and archaeological resources, such as properties listed or eligible for listing on the National Register of Historic Places, included in the State Register of Historic Places, and significant properties included in the Inventory of Historic and Archaeological Assets of the Commonwealth.

21. Underwater Archaeological Resources Regulations

Authorities
M.G.L. c. 6, §§ 179 & 180: Board of Underwater Archaeological Resources; 312 CMR 2.00: Massachusetts Underwater Archaeological Resources

Jurisdiction
Coastal and inland waters of Massachusetts

Regulated Activities
No person may remove, displace, damage, or destroy any underwater archaeological resource except in conformity with permits issued by Massachusetts Board of Underwater Archaeological Resources (BUAR). While underwater archaeological resources are commonly shipwrecks, they also include submerged Native American sites, coastal infrastructure, aircraft, and other underwater artifacts.

Regulatory Summary
BUAR is charged with encouraging the discovery, reporting, interpretation, and protection of the Commonwealth's underwater archaeological resources and promoting and protecting the public's interests in these resources for recreational, economic, environmental, and historical purposes. Proponents of projects in jurisdictional waters that have the potential to cause impacts to the Commonwealth's submerged bottomlands

must contact BUAR to determine if the proposed activity will disturb underwater archaeological resources.

Review Process

Project proponents submit to BUAR descriptions of their proposed project, project location (with coordinates), and project extent with accompanying project plans, maps, and photographs, and a completed Massachusetts Historical Commission (MHC) **(22)** Project Notification Form (PNF). For projects requiring a U.S. Army Corps of Engineers (USACE) **(10)** Massachusetts General Permit, project proponents can submit the Historic Property Notification Form found in Section IX of the permit.

BUAR will analyze the project information and conduct a preliminary review of their files, ArcGIS shipwreck database, and secondary literature sources to identify known and potential underwater archaeological resources within the proposed project area. BUAR will comment on the project area's archaeological sensitivity and whether the project is likely to impact underwater archaeological resources.

If underwater archaeological resources are determined to be present within the proposed project area, BUAR will provide requirements for the avoidance of the resources (the project proponent must also follow the *Policy Guidance for Establishing Shipwreck and Underwater Resource Avoidance Protection Plans* [PDF, 211 KB]). BUAR may also recommend, request, or require project proponents to conduct a pre-disturbance underwater archaeological investigation to: 1) determine the presence or absence of culturally related materials and resources within an area or region of interest, 2) interpret these resources for the benefit of the public, and 3) determine or assess their eligibility for listing in the State and National Register of Historic Places (pursuant to the applicable laws and regulations for cultural resources of Massachusetts and in conformance with BUAR's *Policy Guidance on Archaeological Investigations and Related Survey Standards for the Discovery of Underwater Archaeological Resources* [PDF, 307 KB]). Underwater archaeological investigations conducted as part of environmental review, public planning, and scientific research projects require a BUAR Special Use Permit. These permits are restricted to qualified archaeologists. Archaeological investigations are conducted in compliance with the National Environmental Policy Act of 1969 **(2)**, Section 106 of the National Historic Preservation Act **(22)**, the implementing regulations of the Advisory Council on Historic Preservation, and Massachusetts General Laws concerning BUAR and MHC.

If BUAR finds no record of (and any pre-disturbance underwater archaeological investigation does not identify) any underwater archaeological resources within the proposed project area, the project is unlikely to impact underwater archaeological resources. However, if underwater archaeological resources are encountered as unanticipated discoveries during the course of the project, the project proponent should immediately take steps to limit adverse effects and notify BUAR and other appropriate agencies, in accordance with *Policy Guidance for the Discovery of Unanticipated Archaeological Resources* (PDF, 228 KB).

Forms

Submissions as described above, including a MHC Project Notification Form (PDF, 6 KB) and a USACE Historic Property Notification Form for projects requiring a USACE Massachusetts General Permit

Fees

None

Contact

Contact BUAR

Additional Resources

312 CMR 2.00: Massachusetts Underwater Archaeological Resources
Board of Underwater Archaeological Resources
BUAR - Statute and Regulations
BUAR - Policy Guidance Documents

22. Historic Properties Regulations

Authorities

54 U.S.C. § 300101, et seq.: National Historic Preservation Act (NHPA); 36 CFR part 800: Protection of Historic Properties (Advisory Council on Historic Preservation's regulations to implement Section 106 of the NHPA); M.G.L. c. 9, §§ 26-27C: Massachusetts Historical Commission; 950 CMR 71.00: Protection of Properties Included in the State Register of Historic Places

Jurisdiction

Projects with funding, permitting, or approval by state or federal agencies

Regulated Activities
Federal and state agencies, project proponents, the Massachusetts Historical Commission (MHC), and other interested parties must consult to reach agreement to avoid, minimize, or mitigate adverse impacts to historic and archaeological resources.

Regulatory Summary
MHC, as the office of the State Historic Preservation Officer, administers the National Historic Preservation Act in Massachusetts. MHC inventories historic and archaeological properties, promotes historic preservation, implements state and federal preservation laws, and is the office of the State Archaeologist.

Section 106 of the National Historic Preservation Act requires that federal agencies "take into account" the effects of federal projects on properties listed or eligible for listing on the National Register of Historic Places. In Massachusetts, these federal agencies must consult with MHC to reach written agreement to resolve any adverse effects prior to the issuance of a permit, approval, or funding. Other interested parties, such as local historical and historic district commissions and Native American Tribes, are also consulted. The consultation process, though not guaranteed to preserve significant historic and archaeological resources, is designed to resolve conflicts between proposed uses and historic places and guards against inadvertent destruction of historic cultural resources.

A similar state review process protects properties included in the Inventory of Historic and Archaeological Assets of the Commonwealth and the State Register of Historic Places. State agencies and project proponents are responsible for consulting with MHC to reach an agreement to avoid, minimize, and mitigate any adverse effects to historic and archaeological resources prior to the issuance of a permit, approval, or funding. In addition to the MHC's federal and state preservation programs, many communities have established local historic districts and local preservation bylaws that are implemented by municipal agencies.

Review Process
Applicants must mail or deliver a completed Project Notification Form (PNF) to MHC to obtain written comments regarding the effects of proposed projects on historic resources. The PNF submittal must include scaled project plans and drawings showing existing and proposed conditions and should be submitted in paper format, sized no larger than 11" x 17" (email is not accepted). Projects that require Massachusetts Environmental Policy Act **(1)** review must also submit the Environmental Notification Form with a separate list of any federal agency funding, permitting, or approval.

MHC will review the information and comment within 30 days of receipt. An MHC response will include information on known or anticipated historic or archaeological properties within the project area and any likely impacts, whether additional information is needed, and what avoidance or mitigation measures may be appropriate or necessary. If MHC determines that the project is unlikely to affect significant historic or archaeological resources, MHC review is complete. If the project will have an adverse effect, consultation continues until a written agreement is reached to implement measures that avoid, minimize, or mitigate project-related adverse effects.

Applicants should also contact their local historical or historic district commission to see whether the property is in a local historic district or subject to other local regulatory review processes pertaining to historic and archaeological resources.

Forms

Project Notification Form (PDF, 6 KB)
Guidance for Completing MHC's Project Notification Form (PDF, 17 KB)

Fees

None

Contact

Massachusetts Historical Commission

Additional Resources

36 CFR part 800: Protection of Historic Properties
950 CMR 71.00: Protection of Properties Included in the State Register of Historic Places
Massachusetts Historical Commission
Massachusetts Historical Commission Review and Compliance

ZONING AND CONSTRUCTION

The following requirements regulate the use of land and construction of buildings and other structures, and while they are not specifically environmental permits, they include certain provisions to protect environmental resources:

- **Zoning Bylaws (23)** - These local bylaws, which can include environmental overlay districts, designate zoning districts that have specific requirements.
- **Massachusetts State Building Code (24)** - These requirements protect the structural, life, and fire safety of buildings and structures in Massachusetts and include provisions for energy conservation and reducing damages from flooding.
- **State Environmental Code/Title 5 (25)** - This program protects public health, safety, welfare, and the environment by requiring the proper siting, design, construction, upgrade, and maintenance of on-site sewage disposal systems.

23. Zoning Bylaws

Authorities
M.G.L. c. 40A: Massachusetts Zoning Act; Chapter 665 of the Acts of 1956 (as amended through November 30, 2001): An Act Authorizing the City of Boston to Limit Buildings According to their Use or Construction to Specified Districts

Jurisdiction
Use of land, buildings, and structures by cities and towns in the Commonwealth of Massachusetts

Regulated Activities
Applicants must contact local officials (usually the Zoning Board of Appeals, Zoning Administrator, or Planning Board) to ensure that the proposed project is consistent with local zoning bylaws.

Regulatory Summary
The Zoning Act sets up the structure by which cities and towns adopt zoning bylaws to regulate uses of land, buildings, and other structures for the purpose of protecting the health, safety, and general welfare of present and future inhabitants. Most often, zoning is accomplished through the designation of zoning districts where specific types of uses and/or structures are encouraged or prohibited. To protect environmental resources, a number of municipalities have adopted wetlands and floodplain overlay districts and

watershed and aquifer overlay districts. Related zoning rules can also be found under M.G.L. Chapter 40B (Regional Planning), which permits a city or town to plan jointly with other cities or towns to promote development and prosperity within their area, and M.G.L. Chapter 40R (Smart-Growth Zoning), which encourages "smart growth" to preserve open space while increasing affordable housing. Boston has its own enabling legislation for zoning under Chapter 665 of the Acts of 1956 (and amendments).

Review Process
The process is locally determined. Zoning maps are available from the municipality.

Forms
Forms vary by location

Fees
Fees vary by location

Contact
Town or City Clerk
Telephone Listings for Your City/Town Hall (from the Secretary of the Commonwealth of Massachusetts)

Additional Resources
The Zoning Act: M.G.L. c 40A
Chapter 665 of the Acts of 1956 (PDF, 144 KB)
Massachusetts city and town ordinances and bylaws
Massachusetts law about zoning

24. Massachusetts State Building Code

Authorities
M.G.L. c. 143, §§ 93-100: State Board of Building Regulations and Standards, Powers and Duties, General Objectives…; 780 CMR: Massachusetts State Building Code

Jurisdiction
Structural, life, and fire safety of buildings and structures in the Commonwealth of Massachusetts

Regulated Activities
New construction, reconstruction, renovation, repair, or demolition of existing structures, and changes of use or occupancy of an existing building, must conform to the provisions of the Massachusetts State Building Code.

Regulatory Summary
The purpose of the Massachusetts State Building Code is to protect public safety by ensuring that buildings that are intended for occupancy are structurally sound, are constructed of appropriate materials, have adequate egress for fire safety, promote energy conservation, and have adequate sanitary facilities. The State Building Code consists of a series of international model codes and any state-specific amendments adopted by the Board of Building Regulation and Standards (BBRS). It is administered locally by board-certified building inspectors.

To enhance energy efficiency, the Massachusetts State Building Code has adopted the International Energy Conservation Code (IECC) with amendments that include energy-efficient provisions for both residential and commercial buildings. Municipalities may also choose to adopt the "Stretch Code," which emphasizes energy performance, as opposed to prescriptive requirements, and is designed to result in cost-effective construction.

To reduce damages from floods, the building code provides a number of requirements for construction projects within floodplains, such as using flood-resistant materials and elevating new and substantially improved buildings in floodplains and coastal dunes (see NFIP Floodplain Requirements **(16)** for details).

Review Process
Project proponents must submit an application for a building permit to the local building inspector. The application is to some extent locally determined, but certain minimum information (such as a site description, contractor information, a description of the proposed work, and a cost estimate) must be included. The local building official will issue a building permit and will also inspect the construction to ensure compliance with the building code.

Forms
The BBRS staff and state building inspectors have created separate building permit application forms for state-owned building projects, as well as two standard building permit application forms (one/two family dwellings and other). See Building Permit Application

Forms. Municipalities may add to or use a variation of these forms. Applicants should contact their local municipality to determine if the state forms are acceptable.

Fees

Fees vary by location

Contact

Local Building Department

Additional Resources

Massachusetts State Building Code - 780 CMR
Board of Building Regulations and Standards
Massachusetts Building Energy Code
Who to Contact and What to Do Before Building or Rebuilding
Interpreting Federal Emergency Management Agency Flood Maps and Studies in the Coastal Zone

25. State Environmental Code (Title 5)

Authorities

M.G.L. c. 21A, § 13: State Environmental Code; 310 CMR 11: Title I: Administration and Application of the Environmental Code; 310 CMR 15.000: The State Environmental Code, Title 5: Standard Requirements for the Siting, Construction, Inspection, Upgrade and Expansion of On-Site Sewage Treatment and Disposal Systems and for the Transport and Disposal of Septage; 314 CMR 5.00: Ground Water Discharge Permit Program

Jurisdiction

On-site sewage disposal in the Commonwealth of Massachusetts

Regulated Activities

On-site sewage disposal systems must meet the requirements of the State Environmental Code (Title 5). Projects that generate up to 10,000 gallons per day of sanitary waste are reviewed by the local Board of Health, while projects above this threshold are reviewed by the Massachusetts Department of Environmental Protection (MassDEP).

Regulatory Summary

The purpose of Title 5 is to protect public health, safety, welfare, and the environment by requiring the proper siting, design, construction, upgrade, and maintenance of on-site

sewage disposal systems and appropriate means for the transport and disposal of septage. Design and construction requirements include flow criteria, setback distances, depth to groundwater, construction in velocity zones and floodways (see National Flood Insurance Program Floodplain Requirements **[16]**), and nitrogen loading limitations.

Review Process

The local Board of Health is the approving authority for the installation or repair of septic systems with total design flows less than 10,000 gallons per day, including conventional septic systems or innovative/alternative systems approved for use by MassDEP. Title 5 requires inspections of on-site sewage disposal systems and the replacement or upgrade of systems that fail. In the event of a sale of a home, adding a bedroom (increase in flow), or changing the use of a home with a septic system or cesspool, a system inspection is required. The system must be inspected by a licensed system inspector. Any upgrades and most repairs of the system will require approval by the local Board of Health.

MassDEP is the approving authority for systems owned or operated by an agency of the Commonwealth or of the federal government or systems subject to a variance granted under 310 CMR 15.416 (or as determined by MassDEP to be necessary to carry out the purposes of 310 CMR 15.000). Facilities that discharge 10,000 gallons per day or more of sanitary wastewater to the ground may be required to file a groundwater discharge permit under 314 CMR 5.00.

Forms

MassDEP Title 5 Septic System Forms are used for projects under MassDEP authority and as an option for local Boards of Health, which typically have their own application forms for projects under their authority.

Fees

State fees - check the Schedule of Permit Application Fees and Timelines (PDF, 741 KB)
Local fees vary by location

Contacts

Local Board of Health
Septic Systems & Title 5 (see Contact Information)

Additional Resources

310 CMR 15.000: Septic Systems
314 CMR 5.00 Ground Water Discharge Permit Program

Septic Systems & Title 5
Septic Systems & Title 5 New Construction
Approved Title 5 innovative/alternative technologies

FACILITY OPERATIONS (WATER SUPPLY, AIR QUALITY, WASTE FACILITIES)

The following state and federal permit programs address environmental impacts or pollutant discharges from facility operations:

- **Water Management Act (26)** - This state law preserves water tables and minimum stream flows by requiring permits for new water withdrawals in excess of an annual average of 100,000 gallons per day, or a total of 9 million gallons in any three month period.
- **Interbasin Transfer Act (27)** - This Massachusetts program manages the transfer of water between river basins to protect streamflows and ensure that transferred water is used efficiently.
- **Clean Air Act (28)** - Under both state and federal law, new emissions sources (or changes to/replacement of existing sources) are required to have an approved plan that meets certain criteria and includes the best available air pollution control technology for the amount and type of proposed emissions.
- **Solid Waste Requirements (29)** - These state and local requirements regulate the storage, removal, and transport of solid waste, including restrictions on the disposal of various recyclable and hazardous materials in solid waste facilities.
- **Hazardous Waste Requirements (30)** - These federal and state requirements ensure the proper storage, handling, and disposal of hazardous materials**,** such as waste oil, solvents, and paints.

Point source discharges from facilities are discussed in the Water Quality section under the National Pollution Discharge Elimination System (NPDES) **(12)**, and operators of large and small construction activities must comply with NPDES Stormwater Construction General Permit requirements **(13)**.

26. Water Management Act

Authorities
M.G.L. c. 21G: Water Management Act; 310 CMR 36.00: Massachusetts Water Resources Management Program

Jurisdiction
Ground and surface waters of the Commonwealth of Massachusetts

Regulated Activities
Withdrawals of water from ground or surface sources in excess of an annual average of 100,000 gallons per day, or a total of 9 million gallons in any three month period, must apply for a Water Management Act (WMA) Permit, with exceptions for those with existing Water Management Registrations.

Regulatory Summary
The WMA Program comprehensively manages water withdrawals throughout the Commonwealth to preserve water resources and ensure an appropriate balance among competing water needs. In 2014, the Massachusetts Department of Environmental Protection (MassDEP) adopted revised Water Management Regulations (310 CMR 36.00) that incorporate key concepts from the Sustainable Water Management Initiative. These regulations include a process for calculating a "safe yield," which is the maximum dependable withdrawal that can be made continuously from a river basin (and maximum amount that can be permitted) from each of the state's 27 major river basins. The regulations also outline additional permitting criteria to ensure adequate protection of water resources. These include specific "streamflow criteria" (local streamflow and fisheries conditions) and requirements that permittees minimize the local impacts of their withdrawals and provide mitigation in certain situations where withdrawals are increasing.

Withdrawals that were ongoing when the WMA was passed may have been registered (i.e., withdrawers had the ability to register their 1981-1985 water use; registered water users are entitled to renew their registration every 10 years). Water withdrawals beginning after the 1986 WMA enactment, and registered withdrawers seeking to *increase* withdrawals, require an WMA permit from MassDEP. Initial WMA permits last for up to 20 years and are renewable on a 20-year schedule.

Review Process
A water withdrawal application that includes all withdrawal points and total volume from all withdrawal points must be filed with the MassDEP Water Management Program. The permit application process includes an extensive public notice and comment process to ensure that abutters, other water withdrawers within the river basin, and local officials are informed and have an opportunity to provide comment on possible impacts. Within 10 days of filing, an Environmental Notification Form must be filed with the Massachusetts Environmental Policy Act Office **(1)**.

Required considerations in the permitting process include, but are not limited to:

- Safe yield determinations for each of Massachusetts 27 major river basins;

- Streamflow criteria to protect the natural resources and ecology of waterways by specifying flow alterations and corresponding mitigation requirements;
- Coldwater fish resource protections for applicants seeking groundwater withdrawals, including an evaluation of alternatives to minimize impacts (e.g., shifting to other withdrawal points and optimizing the timing of withdrawals);
- Minimization of impacts to the extent feasible through conservation, optimizing the timing of withdrawals, and returning water to the subbasin;
- Requirements to mitigate the impacts of certain increasing withdrawals of water;
- Water needs forecasts for public water suppliers;
- Water supply protection measures for public water supplies, including Zone II delineations for groundwater sources and wellhead and surface water protection measures as required by Massachusetts Drinking Water Regulations (310 CMR 22.00); and
- Water conservation and performance standards for residential use, such as seasonal limits on nonessential outdoor water use and a water conservation program that includes leak detection and repair, full metering and maintenance of metering, periodic review of pricing, and education and outreach to water users.

Forms

Water Management Act (WMA) Permitting

Fees

Permit Application fee - $4,100
Permit Amendment fee - $1,940
Transfer of a Registration or Permit - $215
Annual compliance fee - $215
Municipalities are fee-exempt
See the Schedule of Permit Application Fees and Timelines (PDF, 741 KB) for details and updates

Contact

Water Management Act Permits and Decisions (see Key Organizations)

Additional Resources

310 CMR 36.00: Massachusetts Water Resources Management Program
Water Management Act Program
Fact Sheet: Water Management Act - Registration and Permitting

27. Interbasin Transfer Act

Authorities
M.G.L. c. 21, §§ 8B-D: Interbasin Transfer Act; 313 CMR 4.00: Interbasin Transfer Regulations

Jurisdiction
Massachusetts river basins, including the ocean basin

Regulated Activities
Transfer of any amount of water, including wastewater, outside a Massachusetts river basin is subject to review and approval by the Massachusetts Water Resources Commission (WRC).

Regulatory Summary
The Interbasin Transfer Act (ITA) is intended to manage the transfer of water between river basins to protect reasonable streamflows within the donor and receiving river basins and to ensure that transferred water is used efficiently. The Massachusetts WRC evaluates all proposed out-of-basin water transfers. The Department of Conservation and Recreation (DCR) Office of Water Resources provides the technical and administrative work for WRC.

Review Process
Proposed transfers may be determined to be insignificant if they: 1) are under 1,000,000 gallons per day; 2) do not harm special resource values, such as endangered species, Areas of Critical Environmental Concern, or cold-water fisheries as defined in 321 CMR 5.00: Coldwater Fish Resources; 3) meet specified streamflow criteria; and 4) do not significantly diminish or prolong the 7Q10 flow (the lowest 7-day average flow that occurs, on average, once every 10 years), which is used as a criterion for National Pollution Discharge Elimination System **(12)** wastewater permits. The WRC evaluation of insignificance is based solely on environmental impacts of the proposed transfer. WRC has 90 days to respond to a Request for Determination of Insignificance.

Interbasin transfers that are over 1,000,000 gallons per day and/or cannot meet the other tests of insignificance must be authorized by WRC, which must hold two public hearings as part of its review. WRC has 60 days from receipt of an Interbasin Transfer Act application to hold the hearings and 60 days after the close of hearings to make a decision. (WRC policy is to hold a third public hearing on a draft Staff Recommendation and vote on the final decision within 60 days of the third public hearing.) Before allowing a transfer, WRC must determine that all practical water conservation measures have been taken, all viable local water sources have been developed in the receiving basin, and reasonable instream flows

will be maintained in the donor basin. Proponents should consider interbasin transfers to be a last resort after all other options within basin have been exhausted.

Forms
ITA Application Materials

Fees
None

Contact:
Interbasin Transfer Act General Information (see Contact)

Additional Resources
Interbasin Transfer Act
313 CMR 4.00: Interbasin Transfer Regulations
Water Resources Commission

28. Clean Air Act

Authorities
42 U.S.C. §§ 7401 *et seq.*: Clean Air Act; M.G.L. c. 111, §§ 142A-142J: Massachusetts Clean Air Act; 310 CMR 7.00: Air Pollution Control

Jurisdiction
National and state air quality

Regulated Activities
Any construction, reconstruction, or alteration of a facility that may emit air contaminants to the ambient air is subject to federal and state requirements.

Regulatory Summary
The federal Clean Air Act requires the U.S. Environmental Protection Agency (EPA) to set National Ambient Air Quality Standards to protect public health and welfare and to regulate emissions of hazardous air pollutants that come from numerous and diverse sources. Each state must develop implementation plans (and obtain approval from EPA) to attain and maintain air quality standards. The Massachusetts Air Program has been developed in conformance with the federal Clean Air Act and Massachusetts statutes and is administered by the Massachusetts Department of Environmental Protection (MassDEP). The regulations

require that MassDEP approve any project involving the construction, reconstruction, or alteration of a regulated air pollutant emissions source that triggers permitting thresholds.

Review Process

An applicant may be required to obtain a Limited Plan Approval, a Non-Major Comprehensive Plan Approval, or a Major Comprehensive Plan Approval from MassDEP, depending on the proposed amount of permitted emissions, the emissions source category, and the capacity of the facility and equipment. Prior to submitting an application, project proponents should contact the appropriate MassDEP Regional Office to arrange a pre-application meeting or teleconference.

Limited and comprehensive plan applications must include emissions limitations that reflect the best available air pollution control technology for the amount and type of proposed emissions. A comprehensive plan application requires the signature of a Massachusetts Registered Professional Engineer certifying the technical accuracy of the application. The review timeline ranges from 72 days to one year, depending on the complexity of the project, the quality of the submitted application, and public comment period requirements. A plan approval remains in effect for the life of the approved facility or equipment, unless subsequent construction, substantial reconstruction, or alteration of the facility triggers additional permitting that would result in a modified or new approval.

Forms

MassDEP Air & Climate Forms

Fees

Limited Plan Approval - $645
Non-major Comprehensive Plan Approval - $2,370
Major Comprehensive Plan Approval - $24,305
See the Schedule of Permit Application Fees and Timelines (PDF, 741 KB) for updates

Contacts

MassDEP Air & Climate Forms (see Contact)

Additional Resources

310 CMR 7.00: Air Pollution Control
Air & Climate Laws & Rules
Air & Climate Permitting & Reporting
MassDEP Air Plan Approval Applications

MassDEP Operating Permit & Compliance Program
MassDEP Regional Offices by Community

29. Solid Waste Requirements

Authorities
M.G.L. c. 111, §§ 31-31B: Removal of Garbage and 150A-150B: Solid Waste Disposal Facilities; 310 CMR 16.000: Site Assignment for Solid Waste Facilities, 310 CMR 19.000: Solid Waste Facility Regulations

Jurisdiction
Solid waste disposal in the Commonwealth of Massachusetts

Regulated Activities
The storage, transport, and disposal of waste materials are subject to review by local boards of health and/or the Massachusetts Department of Environmental Protection (MassDEP).

Regulatory Summary
Local boards of health regulate the removal, transportation, and disposal of refuse, including the siting of solid waste facilities. MassDEP ensures that solid waste facilities comply with siting criteria (310 CMR 16.000) and operate in a way that reduces impacts to public health and the environment (310 CMR 19.000). In addition, MassDEP waste ban regulations (310 CMR 19.017) restrict disposal of various recyclable and hazardous materials in solid waste facilities. Additional special waste requirements (310 CMR 19.061) apply to the handling and disposal of asbestos waste, medical waste, and sludge. Many communities in Massachusetts have adopted local regulations to permit solid waste collection, establish collection times and reporting requirements, set penalties, require recycling, and manage yard waste.

For projects that generate solid waste, business plans should take into account the cost of short-term, on-site storage, transport of waste materials to an approved site, and tipping fees associated with disposal of waste. Proponents are encouraged to identify opportunities to reduce and recycle materials generated in the construction and daily operation of the proposed facilities.

Review Process
The project type will determine whether an application needs to be submitted to MassDEP and/or local Boards of Health (see How to Participate in MassDEP Solid Waste Permitting

Decisions for details). The applications and permit processes vary, but are generally categorized into: facility siting and ownership; facility construction, operation, and reporting; facility closure and reuse; and recycling and composting operations. For facility siting, a facility must first obtain site suitability approval from MassDEP, but the local Board of Health makes the final decision based on public health, safety, and the environment. For facility construction, the applicant must obtain a valid site assignment from the local Board of Health first and then apply for a MassDEP permit before proceeding with construction. For recycling operations, applications must be submitted to MassDEP. MassDEP reviews these proposals and sets conditions for construction to ensure that facilities are designed and built in a way that will not cause air, land, and water pollution or nuisance conditions. Applicants are encouraged to contact the appropriate MassDEP regional office to schedule a pre-application conference to assist with the permit process and ensure a faster review.

Forms

State Forms - Solid Waste Facility Applications & Forms
Local forms vary by location

Fees

State fees vary by type of operation and activity - see the Schedule of Permit Application Fees and Timelines (PDF, 741 KB) for details
Local fees vary by location

Contact

MassDEP Solid Waste Policies, Guidance & Fact Sheets (see Contact)
Local Board of Health

Additional Resources

310 CMR 16.000: Site Assignment for Solid Waste Facilities
310 CMR 19.000: Solid Waste Facility Regulations
Solid Waste Facilities
Waste & Recycling Laws & Rules

30. Hazardous Waste Requirements

Authorities

42 U.S.C. §§ 6901 *et seq*.: Resource Conservation and Recovery Act; 40 CFR 260; M.G.L., c. 21C: Hazardous Waste Management Act; 310 CMR 30.000: Massachusetts Hazardous Waste Regulations

Jurisdiction
Handling, storing, transporting, and disposing of hazardous waste in Massachusetts

Regulated Activities
Entities responsible for projects that generate hazardous waste must have a U.S. Environmental Protection Agency (EPA) ID number, use a hazardous waste manifest, and manage all hazardous waste in accordance with the requirements of 310 CMR 30.000.

Regulatory Summary
The Massachusetts Department of Environmental Protection (MassDEP) administers the Hazardous Waste Management Act and its implementing regulations (310 CMR 30.000). The state act and regulations mirror the federal Resource Conservation and Recovery Act (RCRA) hazardous waste requirements but are more stringent in certain instances. For example, MassDEP regulates waste oil as a hazardous waste, while EPA (RCRA) does not.

Massachusetts regulates the accumulation, recycling, transportation, and disposal of hazardous waste. Hazardous waste is a discarded material that exhibits an ignitable, corrosive, reactive, and/or toxic characteristic, or is on a "list" of hazardous wastes. Regulatory requirements for hazardous waste generators differ depending on the amount and type of hazardous waste generated. All generators of hazardous waste are responsible for ensuring proper disposal. RCRA requires a national "cradle to grave" (i.e., manifest) system for tracking hazardous waste. In Massachusetts, every shipment of hazardous waste by a generator must be transported by a licensed transporter, sent to a licensed or a permitted hazardous waste facility, and accompanied by a hazardous waste manifest.

Review Process
A separate process applies to generators, licensed haulers, and storage, treatment, and disposal facilities. Facilities that generate hazardous waste must determine their regulatory requirements based on the rate at which waste is generated and how much is accumulated on-site. Hazardous waste and waste oil accumulation limits and management requirements will vary based on whether the facility is categorized as a Large Quantity Generator, Small Quantity Generator, or Very Small Quantity Generator. All generators are required to obtain an EPA ID number, complete the generator portion of the manifest, and fulfill the emergency preparation and response requirements. Large generators of hazardous waste are also required to file a biennial report, prepare a contingency plan, and provide personnel training. Refer to *A Summary of Requirements for Small Quantity Generators of Hazardous Waste* (PDF, 402 KB) for a list of applicable hazardous waste requirements.

For transporters of hazardous waste, licenses are issued for five years. The property owner or manager (generator) does not need a license/permit to dispose of the hazardous waste (because the transporter is licensed), but will be required to identify the wastes that are to be transported so that the hauler can properly complete the hazardous waste manifest.

For facilities that treat and store hazardous waste, licenses are also issued for five years. Additionally, some facilities are permitted to recycle certain hazardous wastes as an alternative to disposal. Massachusetts provides a list of Licensed Hazardous Waste Facilities and Permitted Hazardous Waste Recyclers in the Hazardous Waste Facilities & Recyclers Guide.

Forms

Hazardous Waste Manifest, available from licensed haulers

MassDEP Hazardous Waste Forms

Fees

Annual compliance fees for Small and Large Quantity Generators

Hazardous waste transporter fee assessed on a per volume/unit basis on hazardous waste shipments

Fees vary for new or modified recycling facilities and for modification of treatment and storage facilities

See the Schedule of Permit Application Fees and Timelines (PDF, 741 KB) for details

Contact

MassDEP Hazardous Waste Forms (see Contact)

Additional Resources

310 CMR 30.000: Massachusetts Hazardous Waste Management Regulations

MassDEP's Hazardous Waste Management website

APPENDIX: EXECUTIVE ORDERS

A state Executive Order (E.O.) issued by the Governor or a federal E.O. issued by the President is not a statute but does have the force of law—an E.O. is based on existing constitutional/statutory powers and does not require any action by the Legislature to take effect. An E.O. typically requires state and federal agencies to meet certain directives that manage operations of the government.

As part of project review, applicants may be required to submit information to support and meet the requirements of the Executive Orders, such as through an analysis of climate change impacts and consideration of sea level rise.

State and federal Executive Orders that pertain to environmental projects in Massachusetts are described below.

State Executive Orders

- **Executive Order 149: Provisions for state coordination and participation with the federal administration under the National Flood Insurance Act of 1968, as amended, and rules and regulations promulgated thereunder** - Directs state agencies to avoid construction in floodplains, and state-administered grant and loan programs must avoid supporting new construction in floodplains, to the extent possible. In the event that construction of such facilities in a floodplain cannot be avoided, floodplain management criteria set forth in the National Flood Insurance Program (NFIP) regulations shall be observed. Where federal investment is present, federal floodplain regulations may supersede state regulations (see E.O. 11988 below). NFIP construction standards have since been incorporated into the state building code 780 CMR **(24)**.
- **Executive Order 181: Barrier Beaches** - Directs state and federal land acquisition programs to prioritize properties on barrier beaches, prohibits use of state and federal funding for growth and development in hazard-prone areas, requires the preparation of barrier beach management plans for state-owned beaches, prohibits development on primary dunes of barrier beaches or within coastal high hazard areas known as V zones (velocity zones), limits the use of coastal engineering structures (such as seawalls) on barrier beaches, and encourages use of appropriate dredged material for nourishment of barrier beaches. The Massachusetts Office of Coastal Zone Management (CZM) is charged with coordinating the barrier beach management policy for state agencies in the Commonwealth.

- **Executive Order 569: Establishing an Integrated Climate Change Strategy for the Commonwealth** - Directs the Commonwealth to reduce its emissions from state operations, plan and prepare for impending climate change, and enhance the resilience of government investments. The state must use an integrated strategy that brings together all parts of state and local government to effectively address climate change. The Secretary of the Executive Office of Energy and Environmental Affairs (EEA) is responsible for coordinating new and existing efforts to mitigate and reduce greenhouse gas emissions and to build resilience and adapt to the impacts of climate change. To ensure that the statewide emissions limits mandated by the Global Warming Solutions Act (GWSA) are met, the Massachusetts Department of Environmental Protection (MassDEP) promulgated new and amended final regulations that establish specific declining greenhouse gas emission limits on many types of sources across the state **(28)**.

Federal Executive Orders

- **Executive Order 11988: Floodplain Management** - Requires federal agencies (and subsequently any projects that include federal funding or oversight) to determine whether a proposed project is located in a floodplain, to avoid using the floodplain, and to consider alternatives to avoid adverse effects and incompatible development in floodplains. The E.O. also requires public notice and opportunities for early public review of any plans or proposals for actions in floodplains. To help apply the Order to their actions, the Federal Emergency Management Agency (FEMA) also developed an eight-step process to evaluate the appropriateness of a proposed project in the floodplain.
- **Executive Order 13690: Establishing a Federal Flood Risk Management Standard and a Process for Further Soliciting and Considering Stakeholder Input** - Amends E.O. 11988 by requiring that federal agencies (and subsequently any projects that include federal funding or oversight) use natural systems, ecosystem processes, and nature-based approaches when developing alternatives for consideration. E.O. 13690 also requires that one of four defined approaches be used to establish the floodplain.
- **Executive Order 11990: Protection of Wetlands** - Requires that federal agencies (and subsequently any projects that include federal funding or oversight) minimize the destruction, loss, or degradation of wetlands, and preserves and enhances the natural and beneficial values of wetlands. The E.O. also directs federal agencies to avoid undertaking or providing assistance for new construction in wetlands unless there is no practicable alternative to construction, and that the proposed action includes all practicable measures to minimize harm to wetlands. Finally, the E.O. requires the opportunity for early public review of any plans or proposals for new construction in wetlands.