

Title 5 and Watershed Permitting Regulatory Proposal

Presentation to the MA Water Resources Commission

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Water Resources Commission

Final Watershed Permitting Regulations Preview

Background

- a. Nitrogen Sensitive Embayments
- b. Overview of 2022 Proposed framework and Draft regulations

Major comments received

- a. Geographic Area
- b. Time allotted for Title 5 Upgrade and Watershed Permit
- c. Streamline Watershed Permit Process

Next Steps

Background – The Problem



Many estuaries do not meet the Massachusetts Water Quality Standards, resulting in an "impaired" listing and requiring development of Total Maximum Daily Load (TMDL).

This is an **environmental problem and economic problem** because it causes a decline in:

- Fishing
- Shellfishing
- Recreational opportunities
- Tourism
- Real Estate Values
- Business

Unaddressed, this problem will become worse.

Background- 2022 Proposed Regulatory Strategy

Title 5 Regulatory Revision:

- Establish new "Nitrogen Sensitive Area" (NSA) designations under Title 5 regulations.
- Septic systems located in new NSA's would be required to be constructed or upgraded with enhanced nitrogen treatment systems, **unless** the designated watershed is covered by a **Watershed Permit**.

New Watershed Permit Regulations:

- **Requires Water Resources Commission Approval**
- Establish new Watershed Permit framework.
- Authorizes 20 year permits to implement long term wastewater solutions inclusive of innovative solutions.

Background – 2022 Proposed Regulatory Strategy (Continued)

NSA designation requires reduction in nitrogen load migrating to impaired estuaries:

Option 1: Septic systems serving new construction/existing facilities must incorporate **Best Available Nitrogen Reducing Technology** within 5 years of the effective date of the NSA designation

OR

Option 2: Community(ies) operate under a **Watershed Permit** detailing the plan to achieve nitrogen reduction

2022 Proposed Title 5 Regulatory Framework

Current Title 5 regulations

- Defines 'Drinking Water Protection' Nitrogen Sensitive Areas (NSAs) as:
 - **New Construction** in Zone IIs, Interim Wellhead Protection Areas (IWPA) and areas with both on-site septic systems and non-public drinking water supply wells
- Imposes loading restrictions (440 gpd/acre)
 - **These provisions are maintained in Draft Regulations**

Proposed Title 5 regulations

- Establishes new designation of **Natural Resource Area NSAs**
 - **New Construction and existing systems** in areas designated as Natural Resource Areas NSAs
 - Watersheds with nitrogen Total Maximum Daily Load (TMDL) or scientific evaluation quantifying nitrogen impact
 - Automatic designation or Public Notice designation

2022 Proposed Regulatory Framework (cont'd)

Automatic Natural Resource Area NSAs designation:

- **Upon promulgation of Title 5**
- Watersheds subject to the Cape Cod 208 plan with a nitrogen Total Maximum Daily Load
- All Cape Cod communities are subject to the “208 Plan” approved by EPA in 2015
- There are currently 30 watersheds across 11 Cape Cod communities with EPA-approved nitrogen TMDLs

2022 Proposed Regulatory Framework (cont'd)

Natural Resource Area NSA designation through public process:

- Watersheds on the Islands and southeastern/south coastal Massachusetts with a TMDL or scientific evaluation showing nitrogen impairment; Cape Watersheds with TMDL development or scientific evaluation after Title 5 promulgation
- May be designated through a public process after development of TMDL or conclusion of scientific evaluation showing nitrogen impairment



MA Department of Environmental Protection

Natural Resource Area Nitrogen Sensitive Areas

Status as of November 2022

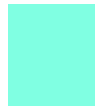
LEGEND



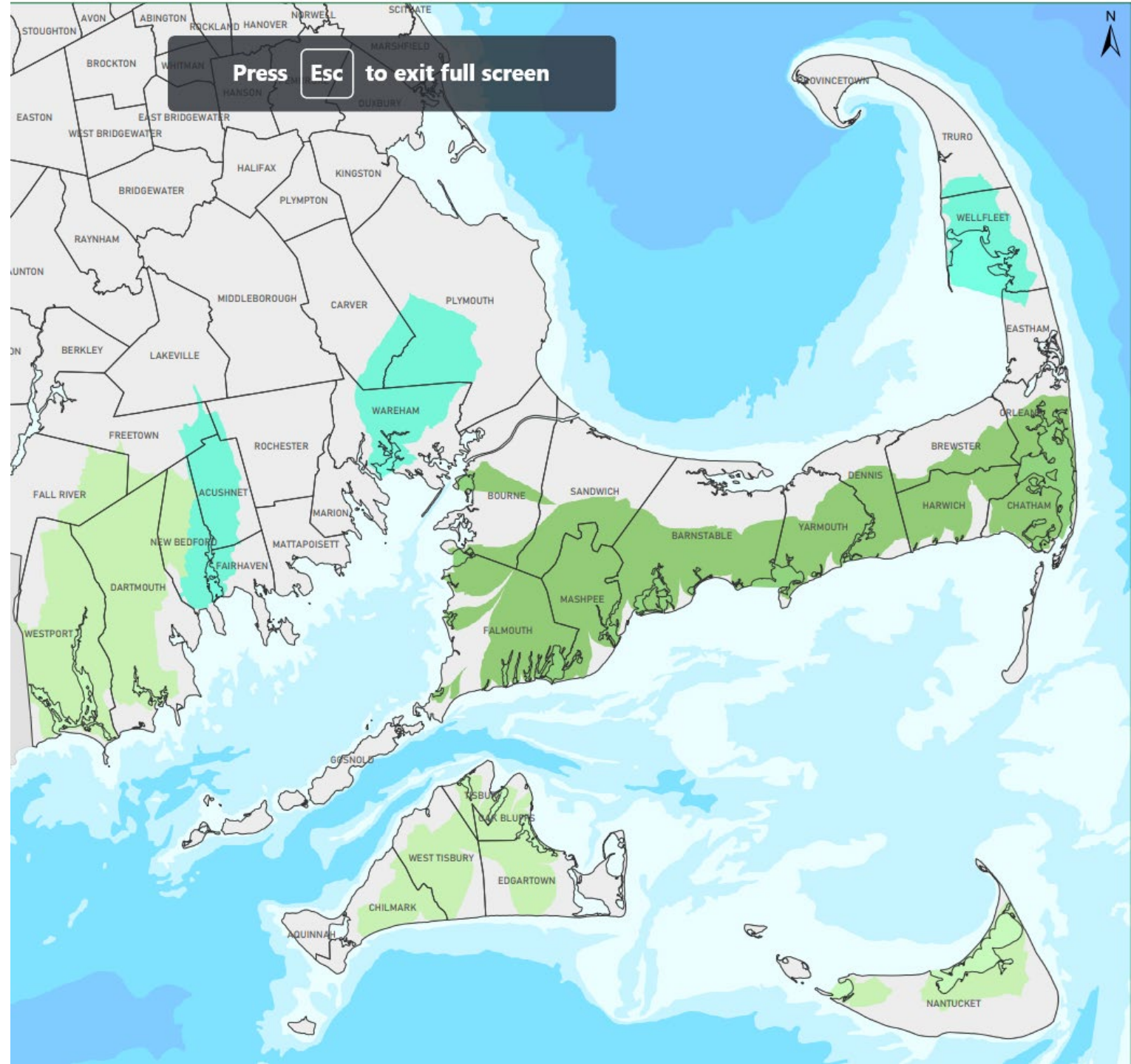
Watersheds with final total nitrogen TMDLs that MassDEP will automatically designate as Natural Resource Area NSAs upon promulgation of the proposed Title 5 amendments



Watersheds with final total nitrogen TMDLs that MassDEP may designate as Natural Resource Area NSAs in the future, after promulgation of the proposed Title 5 amendments



Watersheds with currently accepted MEP reports, but not final total nitrogen TMDLs, that MassDEP may designate as Natural Resource Area NSAs in the future, after promulgation of the proposed Title 5 amendments



2022 Proposed
Regulatory
Framework
(cont'd)

Exemption from Individual System Enhanced Treatment Requirements for Natural Resource Area NSAs:

- If communities obtain a **Watershed Permit** that covers an area that would be subject to new NSA regulations, the Title 5 NSA requirement to install Best Available Nitrogen Reducing Technology in 5 years would **not** apply
- If a community submits a Notice of Intent (NOI) within 18 months of designation as an NSA, the 5-year installation requirement is paused

2022 Proposed Regulatory Framework (cont'd)

Watershed Permit:

- 20-year voluntary permit instead of the traditional five-year permit
- Issued to Local Government Unit, Regional Local Government Unit, Multiple local Government Unit (through Intermunicipal agreement)
- Provides communities the opportunity to employ a greater range of solutions to address their water quality needs, including alternative or innovative approaches
- Utilizes an adaptive management approach, requires monitor, evaluation, reporting of results, and modification of the approach as needed to address conditions that are causing the water quality impairments
- Watershed Permit is based on a Town approved **Watershed Management Plan**



Watershed Management Plan:

- A long-term plan to address an existing water quality impairment to restore and protect water quality
- Based on a Comprehensive or Targeted Watershed Management Plan
- The plan must be designed to reduce nitrogen loads by 100% within 20 years
 - MassDEP may allow for at least a 75% load reduction and may determine an alternative schedule is appropriate based on watershed-specific issues

Background – 2022 Public Outreach Efforts

Regulatory Framework:

- In June 2022, MassDEP released a proposed regulatory framework
- Implemented outreach campaign, including:

2 Legislative Briefings

45 public meetings

- 32 one-on-one meetings with local officials
- Engagement with Stakeholders including: Cape Cod Commission, Cape Cod Board of Health Coalition, Cape Cod Municipal Managers Association, Cape Cod Realtors Association, Cape Cod Commission, Buzzards Bay Action Committee, Island Health Agents, Cape Town Managers Association, U.S. EPA Region 1, Cape and Off-Cape Town officials

Background –Draft Regulations Public Comment

Draft Regulations:

- November 10, 2022 MassDEP issued draft regulations for public comment
- December 16, 2022 public comment deadline extended until January 30, 2023
 - 4 Public Information Sessions
 - 5 Public Hearings
 - Legislative briefing
 - 3 Legislative and 4 Municipal “Office Hours”
 - Received more than 900 comments

Major Public Comments Received

Geographic Area

Timing

- Title 5 System Upgrade
- Watershed Permit

Streamlining Watershed Permit Process

- Comprehensive or Targeted Watershed Management Plan Status and Process
- Flexibility
- Regulatory requirements
- De Minimis Load

Major Comments

Geographic Area

- Communities at different stages in assessing and addressing coastal water quality issues
- Cape Cod further along in their process
 - MEP Reports
 - Cape Cod 208 Plan
 - TMDLs developed
 - Towns already implementing solutions
- Some off-Cape communities need more discussion and strategic planning
 - Time to assess nitrogen sources
 - Time to plan for new requirements

Major Comments

Timing

2022 Proposed Title 5 Timeframe

5-year upgrade requirement timeframe too short

Feasibility issues for system owners, Boards of Health, Installers

Potential supply and contractor constraints

2022 Proposed Notice of Intent (NOI) and Watershed Permit Application timeframe

18-month NOI submittal too short

Want to pursue Watershed Permit but not ready yet

Need more time to complete planning process

Major Comments

Watershed Permit

Towns want more flexibility with Watershed Permit:

Want to utilize existing approved Comprehensive or Targeted Watershed Management Plans

Want credit for work previously done

Want permit to cover multiple Watersheds

Major Comments

Watershed Permit cont'd

Towns want more flexibility with Watershed Permit:

Concerned with meeting sentinel station concentrations vs. nitrogen load reductions

Concerned with meeting nitrogen load reductions in the specified timeframe

Want a simpler pathway for communities that encompassed a watershed or part of a watershed where the community's nitrogen contribution to the embayment or estuary was only a very small proportion of the entire watershed – a de minimis load

Next Steps

- Approval of Watershed Permitting regulations by:
 - **Water Resources Commission – at a meeting later in June 2023**
 - Department of Public Health
- Promulgation of Final Title 5 and Watershed Permitting regulations – Summer 2023
- Roll-out and Implementation – starting in Summer 2023 and continuing

Questions