



## COMMONWEALTH OF MASSACHUSETTS

### MASSTRAILS GRANT PROGRAM

#### Natural Heritage and Endangered Species Program Information

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The Natural Heritage and Endangered Species Program oversees the regulatory protection of rare species and their habitats as codified under the Massachusetts Endangered Species Act (MESA) (M.G.L. c.131A) and Wetlands Protection Act (WPA) (M.G.L. c.131 s.40). In order to protect rare species and their habitats NHESP reviews projects & activities proposed within Estimated or Priority Habitat to determine if state-listed species or their habitats will be impacted by the project. All mapped habitat areas are based on actual records of state-listed species.

As a part of the **MassTrails Program** regulatory review process, your grant project tasks are reviewed and, if necessary, the location of your project is examined for any overlap with priority or estimated habitat. If overlap occurs, your project is submitted by the MassTrails Administrator to NHESP for a pre-filing review. NHESP then provides comments on whether the project is exempt or if it will require filing. When a grant award letter is sent to you, it may include a condition that you must file with NHESP before proceeding with the project. If filing is required, it is the MassTrails Grantee's responsibility to file. Reimbursement for filing is possible, which is typically a fee of \$300, provided MassTrails reimbursement procedures are followed and the expenditure occurs within the contract time period (i.e. after the contract is signed). The MassTrails Administrator will provide you with the NHESP pre-filing comments before you file.

**NOTE:** *If you (the MassTrails grantee) do not own the land where your project is taking place, landowner permission to file with NHESP (and WPA) is required and must be documented.*

Below is an outline of the NHESP Review Process as well as instructions for filing.

#### **Who Must File?**

Proponents with projects and activities proposed within **Priority Habitat of Rare Species and Estimated Habitat of Rare Wetland Species** must file with NHESP for review and approval.

- Under MESA, certain projects or activities within Priority Habitat may qualify for a MESA filing exemption . Other projects may have met specific permitting milestones before being mapped in Priority Habitat, and are therefore "grandfathered."
- Under WPA, if a Notice of Intent (NOI) is required for a project or activity in Estimated Habitat, a copy of that NOI must be sent to the NHESP.

#### **What is a Project or Activity?**

Actions that include, but are not limited to, soil or vegetation alteration, grading, excavation, construction of buildings or structures, conversion of agricultural land, dock installation, dredging, pond vegetation management, beach nourishment, bank stabilization, construction or removal of dams. See the regulatory definition in 321 CMR 10.00.

## **How to File**

Filing requirements differ under MESA and WPA.

- Under MESA, project proponents should submit the following to the NHESP:
  - **MESA Project Review checklist,**
  - **filing fee,** and
  - the required information outlined on the checklist.
- Under WPA, if a project is located within Estimated Habitat and a NOI is required, a copy of that NOI must be sent to the NHESP (no later than the date for filing of the NOI with the Conservation Commission) for review.

**NOTE:** DEP and NHESP have also developed a Streamlined Notice of Intent process for projects that must be reviewed under both MESA and WPA.

## **Review Timelines**

Timelines may differ under MESA and WPA.

- Under MESA, within 30 days of receiving a filing, the NHESP will provide a response letter indicating whether or not the submission is complete. If the submission is complete, the NHESP has an additional 60 days to provide a determination. However, the majority of project reviews are completed within the first 30 days.
- Under WPA, within 30 days of receipt of a complete NOI, the NHESP will provide the Conservation Commission and applicant with a determination letter. For applicants who provide a complete streamlined NOI/MESA filing the NHESP will provide a determination for both MESA and WPA within 30 days.

**NOTE:** The NHESP is committed to providing review outcomes in a timely manner, often before the regulatory deadline to accommodate Conservation commission hearings, staff time permitting.

## **Possible Review Outcomes**

During the Regulatory Review process, NHESP staff will determine whether the project, as proposed, will impact state-listed species and their habitats.

- Under MESA, the NHESP will provide a determination letter stating whether or not a project or activity, as currently proposed, will result in a "Take" of state-listed species. Often projects will not negatively impact state-listed species or their habitats; others may require certain conditions such as timing restrictions to avoid impacts to state-listed species and their habitats. A small percentage of projects will impact state-listed species or their habitats and must either be revised to avoid such a "Take" or must meet the performance standards for the issuance of a Conservation and Management Permit.
- Under WPA, the NHESP will provide a determination letter to the applicant and the Conservation Commission. In this letter, the NHESP will state whether or not a project, as currently proposed, will have an "Adverse Effect" on the wetlands habitat of state-listed wildlife species.

All of this information can be found on the NHESP Regulatory Review website at:

<http://www.mass.gov/eea/agencies/dfg/dfw/natural-heritage/regulatory-review/>

The MESA Fee Schedule and other relevant links can also be found at: <https://www.mass.gov/how-to/how-to-file-for-a-mesa-project-review>