

MassDEP Regulatory Reform Initiative

- Renewable Energy Access Limited Project
- Test Projects
- Buffer Zone Minor Activities
- Stormwater
- Ecological Restoration Projects
- Improvement Dredging within ACECs
- Combined Applications and Permits
- Stream Crossing Standards
- Proposed Definition Changes
- Wildlife Habitat Evaluations



Renewable Energy Access Limited Project



Purpose:

Improve access for renewable energy projects.

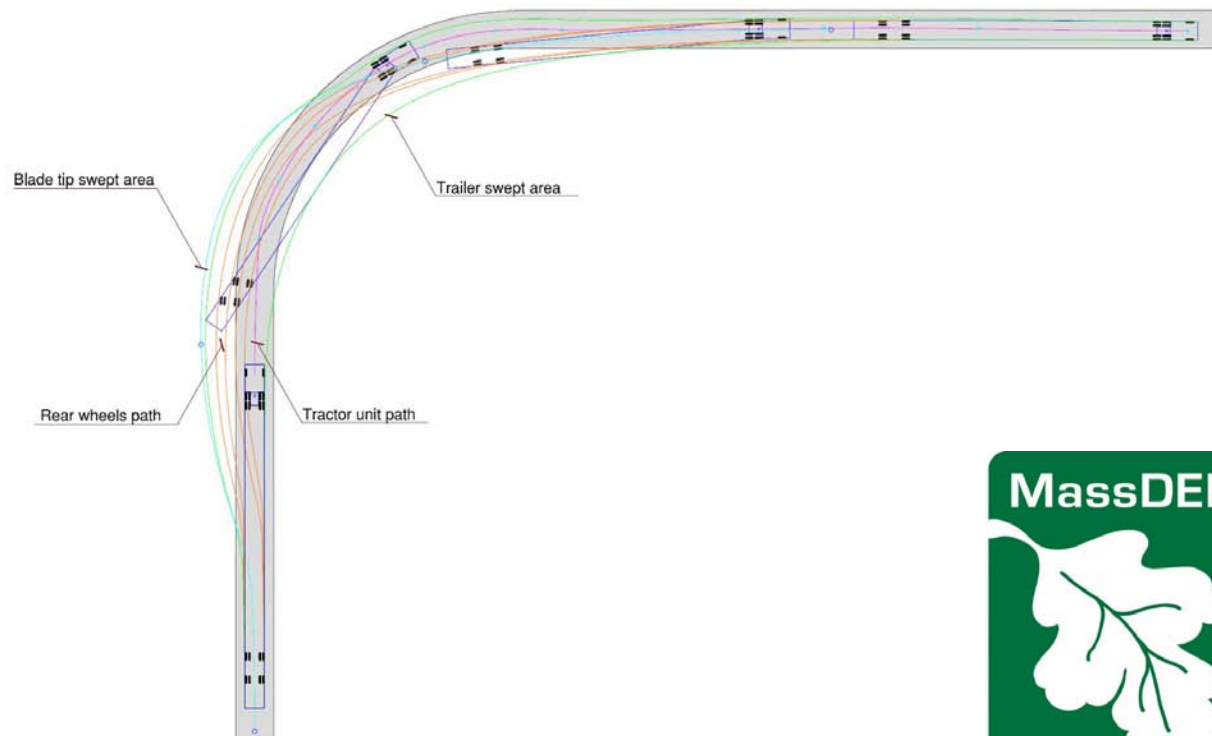
Public Comments:

- Objections raised to anticipated impacts to wetland functions
- Better safeguards needed to assure best alternative to minimize impacts



Renewable Energy

Wind Turbine Trailer Turning Radius



Renewable Energy Access Limited Project



Response:

- Text strengthened to require:
 - Evaluation of reasonable alternatives;
 - Provide replication to the extent practicable;
 - Design and construct any stream crossing consistent with the Massachusetts Stream Crossing Standards.



Test Projects

Streamlined permitting for water-dependent innovative technology

Public Comments:

- Impacts unknown/no assurance of compliance with performance standards
- Requests for additional notice and consultation
- Limit pilots to water-dependent technologies.



Test Projects

- Response:
- Monitoring required during the test period to document anticipated project impacts
- Test project removal required
- Test site restoration to pre-test conditions required.
- Existing permitting process deemed to provide sufficient notice and opportunity for comment;
- Test projects to be limited to water-dependent

Kinetics



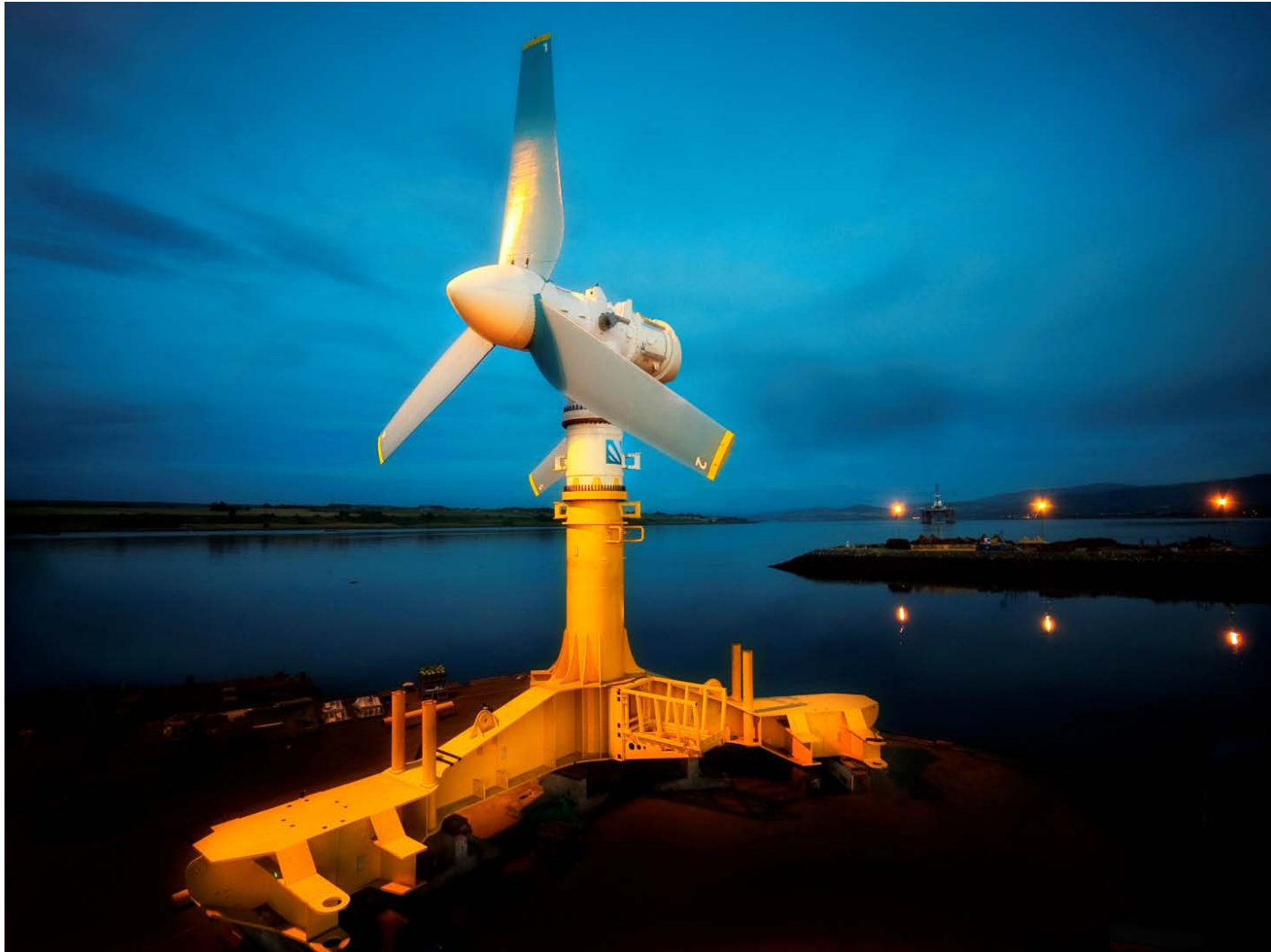
Aquamarine Oyster: Water Power



Pelamis Wave Energy Converter



Tidal turbines



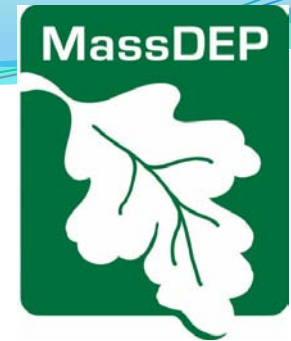
Tidal turbines



Helical axis tidal turbine



Buffer Zone Minor Activity Exemptions



Purpose:

- Intent is to eliminate projects with low environmental impacts
- Allow commissions to deal with more complex and time-consuming issues
- Since Buffer Zone established by regulation, exemptions allowed vs. statute does not allow for exemptions for activities in Resource Areas.



Buffer Zone Minor Activity Exemptions

Public Comments

- Complexity of eligibility criteria/pre-conditions questioned;
- Challenged conservation commissions oversight ability;
- Difficulty of meeting eligibility requirements and demonstrating project's exempt status;
- Remove 50% house footprint exemption

Response to comments

- Pre-conditions eliminated/narrative standards developed;
- Eliminated 50% house footprint exemption
- Standards require protection of wetland resource areas.

Buffer Zone Roadwork



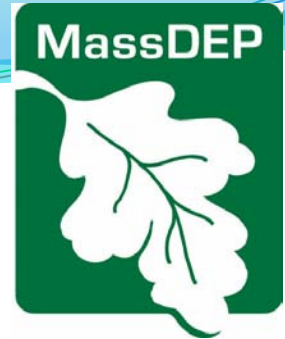


Stormwater

Purpose

Encourage maintenance of stormwater structures.

- No new resource areas created for stormwater systems installed after November 18, 1996
- Operation and maintenance of system built after 1996 also exempt
- Exemption for O&M on systems improved after 1996



Stormwater

Public Comments –

- Changes generally supported
- Revision expands the exemption
- Extend exemption to the **maintenance** and **improvement** pre-1996 stormwater management systems.

MassDEP Response

- Decision against extension of exemption to pre-1996 because:
 - Likely constructed inconsistent with the MassDEP 1996 Stormwater Policy.
 - Possibly built within naturally occurring wetlands.

Stormwater Retention





Ecological Restoration Projects

General permits:

- *dam removal*
- *stream daylighting*
- *shellfish habitat restoration*
- *fish passage*
- *removing tidal restrictions*

Sackett Brook, Pittsfield



Sackett Brook, Pittsfield



Stream Daylighting – Gillette Stadium





Tidal Culvert Replacement



Tidal Culvert Replacement





Benefits of a Restoration Order of Conditions

- Provides incentives to undertake restoration
- Improves speed and predictability of Orders of Conditions
- Identifies key issues for review and information development
- Projects eligible for ROC (General Permits) are exempt from MEPA
- Order of conditions serves as the Water Quality Certification (except for dredge projects)



Criteria for Restoration Projects

- Project will benefit at least one of the interests of the Act
- Avoid and minimize adverse impacts
- Utilize erosion control BMPs
- No significant effect on flood impacts to the built environment
- No impacts to vernal pools or ORWs
- No armoring of barrier beaches or dunes





Restoration

Public Comments:

- Protect agriculture and water supply withdrawals after dam removal
- Do not exempt projects from wildlife habitat evaluations
- Concerns for the management of contaminated dredged sediments
- Exclude hazardous waste clean-up as restoration

Response:

- Redrafted to require projects involving contaminated sediments comply WQC and MCP standards
- ROC limited to general conditions – conservation commissions cannot add conditions.

Improvement Dredging within ACECs

- Allowance for limited improvement dredging within ACECs for the maintenance or restoration of historic navigation channels
- Public comments
- Both supportive and against the proposed change.
- Potential re-use of contaminated dredged sediment in ACECs for ecological restoration projects.
- Final regulations for Ecological Restoration Projects clarify the applicable standards for reuse of contaminated dredged sediments.



Pleasant Bay Breach



Pleasant Bay ACEC



Marine Dredging



Combined Applications and Permits

Designed for coastal dredging projects subject to:
Wetlands Protection Act, Chapter 91 and the 401 Water
Quality Certification.

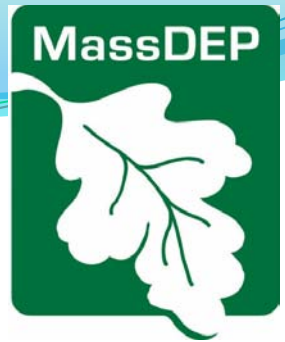
Public Comments:

- Commentors asked for clarifying details on mechanics

Response:

- MassDEP will provide application forms, instructions, and training.

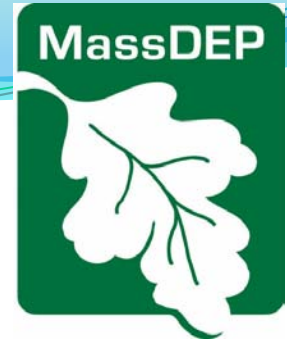




Stream Crossing Standards

- New crossings must meet the Massachusetts Stream Crossing Standards
- Standards apply to:
 - Restoration 310 CMR 10.11-14;
 - Inland/coastal Limited Projects 310 CMR 10.24 and 10.53
 - Bank 310 CMR 10.54
 - Land Under Water 310 CMR 10.56
- The bottom of a span structure or the upper surface of an embedded culvert is above the elevation of the top of the bank,
- Channel spans minimum of 1.2 times the bankfull width
- Replacement crossings: to the maximum extent practicable

Stream Crossing Standards: Maximum Extent Practicable



- Balance environmental benefit vs. cost;
- Potential for downstream flooding;
- Upstream and downstream habitat (in-stream habitat, wetlands);
- Erosion potential /stream stability;
- Extent of habitat fragmentation/stream mileage improvements;
- Storm flow conveyance;
- Engineering design/hydrologic constraints;
- Additional impacts to wetlands;
- Potential to affect property and infrastructure;
- Cost of replacement.

Town Brook – New Bridge to replace Culvert



Wildlife Habitat Evaluations



Mandated detailed evaluation for project within Habitat of Potential Regional or Statewide Importance.

Public Comments:

- More evaluation needed
- Requirement for detailed evaluations for projects in areas designated as Potentially Significant Wildlife Habitat on CAPS maps not fully understood.

Response:

- Proposal withdrawn.
- May reconsider with additional stakeholder input.

Proposed Definition Changes



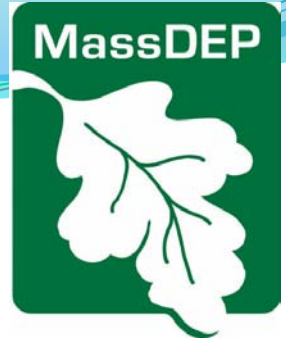
- Aquaculture – revised to include “municipal shellfish propagation”
- Public comments - No changes were made as a result of public comments.
- Salt Marsh: Revised to reflect the fact that certain species of plants such as *Phragmites* can occur in freshwater or saltwater environments.
- Public comment objected to including *Phragmites* as a salt marsh plant; change retained to reflect the reality that *Phragmites* may exist in a salt marsh.
- Dredge Material:
- Public comment noted that activities should include evaluation of carbon management, per Global Warming Solutions Act; deemed beyond the scope and intent of the draft regulations.



Proposed Definition Changes

Innovative Technology:

- Public comment - clarify the definition to “including but not limited to renewable energy”
- Response –
 - The proposed text was included in the original definition of Innovative Technology;
 - Specific examples of pollution prevention projects not included as possibly not “water-dependent”;
 - Definition deemed broad enough to capture such technologies if innovative and water dependent.



Proposed Definition Changes

Primary Dune and Velocity Zone

Public comments:

- Make definition of primary frontal dune consistent with FEMA definition
- Substitute term “sediment” for “sand”
- Modifying to read, “subject to high velocity wave action from storms ...”
- Public Comment objected to the proposed reliance on Preliminary FEMA maps

Response:

- Adopted text consistent with the provisions of FEMA.
- Term “sand” changed to “sediment”
- Modified to reference “from storms” to be consistent with the FEMA definition for the velocity zone



Proposed Definition Changes

Historic Mill Complex and Man-Made Canal

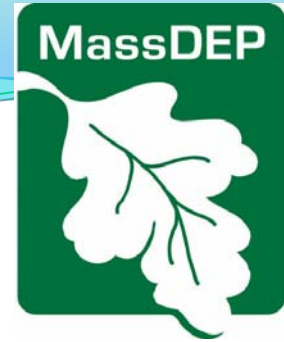
Public comments:

- objections to change that would apply to large tracts of land; extend canal exemption to irrigation ditches; proposal not part of regulatory reform stakeholder review.

Response:

- Proposals withdrawn
- MassDEP may reconsider with further stakeholder input.

Abutter Notice



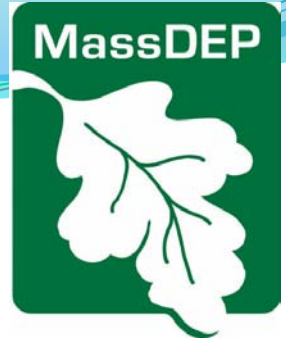
- Scope change for abutter notification:
 - land under water bodies and waterways
 - sites greater than 50 acres
 - linear-shaped projects

Comments:

- Suggested modifications to the proposed definitions
- Clarify how to be applied

Response

- Minor changes were made to proposed final rules
- Regulations mirror statutory definitions.



Statutory: Emergency Declaration

Effectuate Statute authorizing Severe Weather
Emergency Declarations: 310 CMR 10.06(8)

- Public Hearings – February 2014
- Supplements existing Emergency Regulations

Public Comments

- Specify work limits to abate threat to public health/safety
- Prohibit permanent fill or dredging of streams
- Include reasonable restoration to pre-storm conditions
- Specify work notice and reporting requirements



Emergency Declaration

Statute requirements:

- Electronic Notice to all conservation commissions;
- Specify types of work allowed;
- Identify mitigating measures;
- Specify reporting requirements;
- Limit geographic extent;
- Limit duration.