MASSWILDLIFE

Regulatory Review under the Massachusetts Endangered Species Act

Natural Heritage and Endangered Species Program

Natural Heritage & Endangered Species Program

- Established in 1978 - Part of MassWildlife since 1983
- Protection of the state's native biological diversity
- Highest priority: state-listed rare species

Piping Plover (T)

Listed Species

- **173 animals**
- **259 plants**

Species officially listed as:

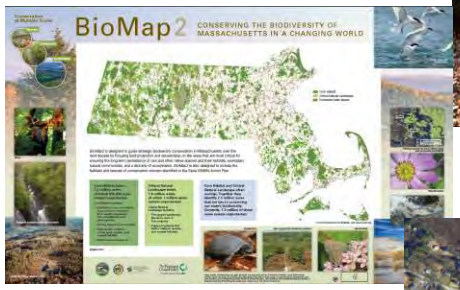
- **Endangered (E)**
- **Threatened (T)**
- **Special Concern (SC)**

American Sea-Blite (T)

NHESP Conservation Tools:

1. Land Protection

2. Education



3. Data Management & Analysis

4. Habitat Management
   & Ecological Restoration

5. Regulatory Review

Regulatory Review

Review of proposed projects and activities for impacts to rare species under:

- MA Endangered Species Act (MESA)
- MA Wetlands Protection Act (WPA)
- MA Environmental Policy Act (MEPA)
- MA Forest Cutting Practices Regulations

MA Endangered Species Act (MESA)

MESA Regulations - 321 CMR 10.00

- **Prohibits <u>unauthorized</u> Take -** "to … harm, … **kill**, … **disrupt** the nesting, breeding, feeding or migratory activity …. [and] the modification, degradation or **destruction of Habitat**."
- Defines "Priority Habitat" and outlines delineation process
- Establishes review process, exemptions and grandfathering provisions

Wood Turtle (SC)

Wetlands Protection Act (WPA) & Rare Species

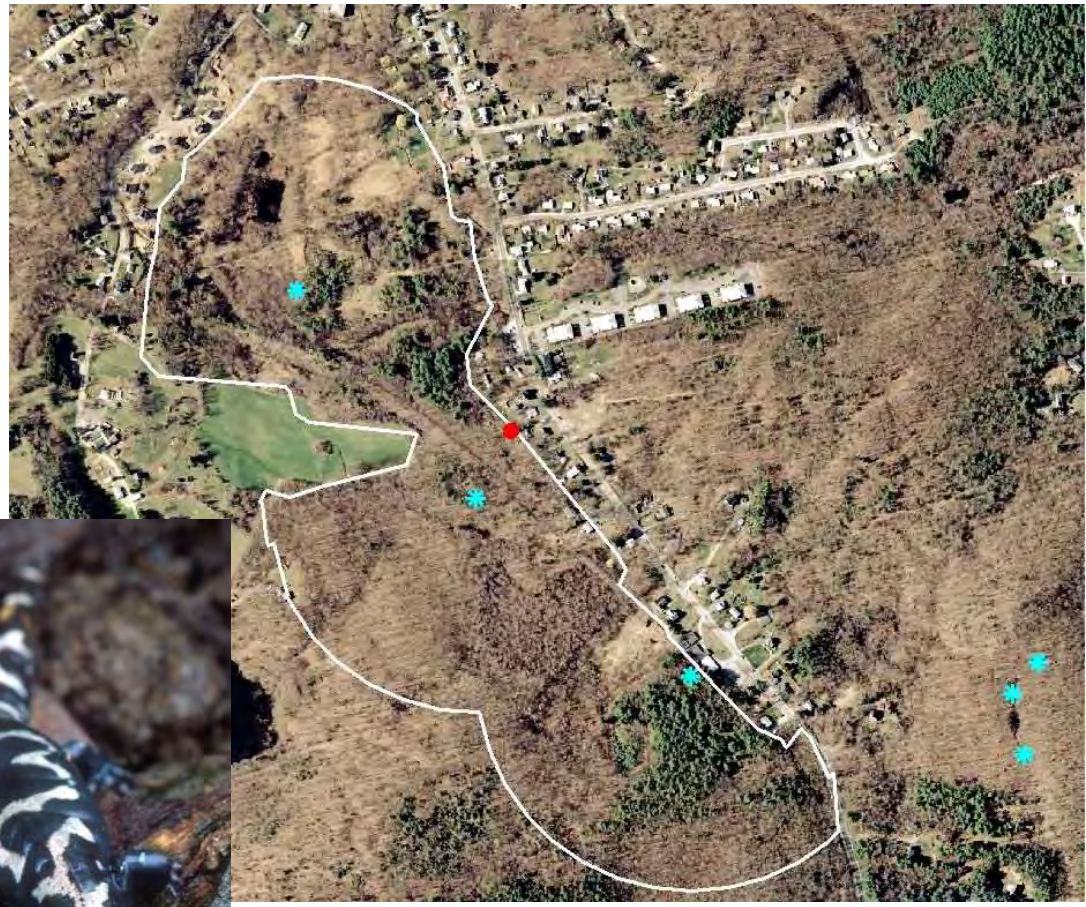
WPA Regulations – 310 CMR 10.37, 10.58(4)(b), 10.59

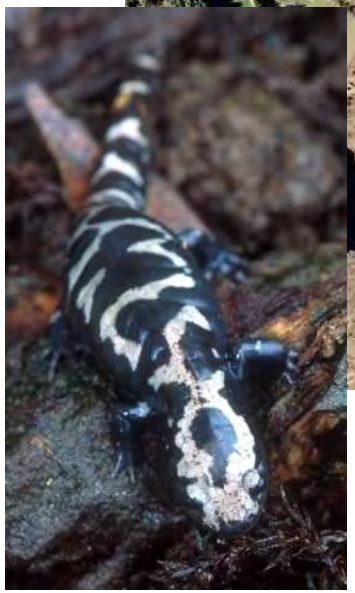
- Assess impacts to Wetland Resource Area Habitats for Rare Wetlands Wildlife
  - No review of state-listed plants
- Defines "Estimated Habitat"
- If in Priority Habitat but not Estimated Habitat… only needs MESA review

American Bittern (E)

How do we delineate Priority / Estimated Habitat?

- Observation submitted
- Reviewed by biologist
- Accepted into database
- Map possible habitat
- Refine mapping
  - habitat quality
  - exclude development





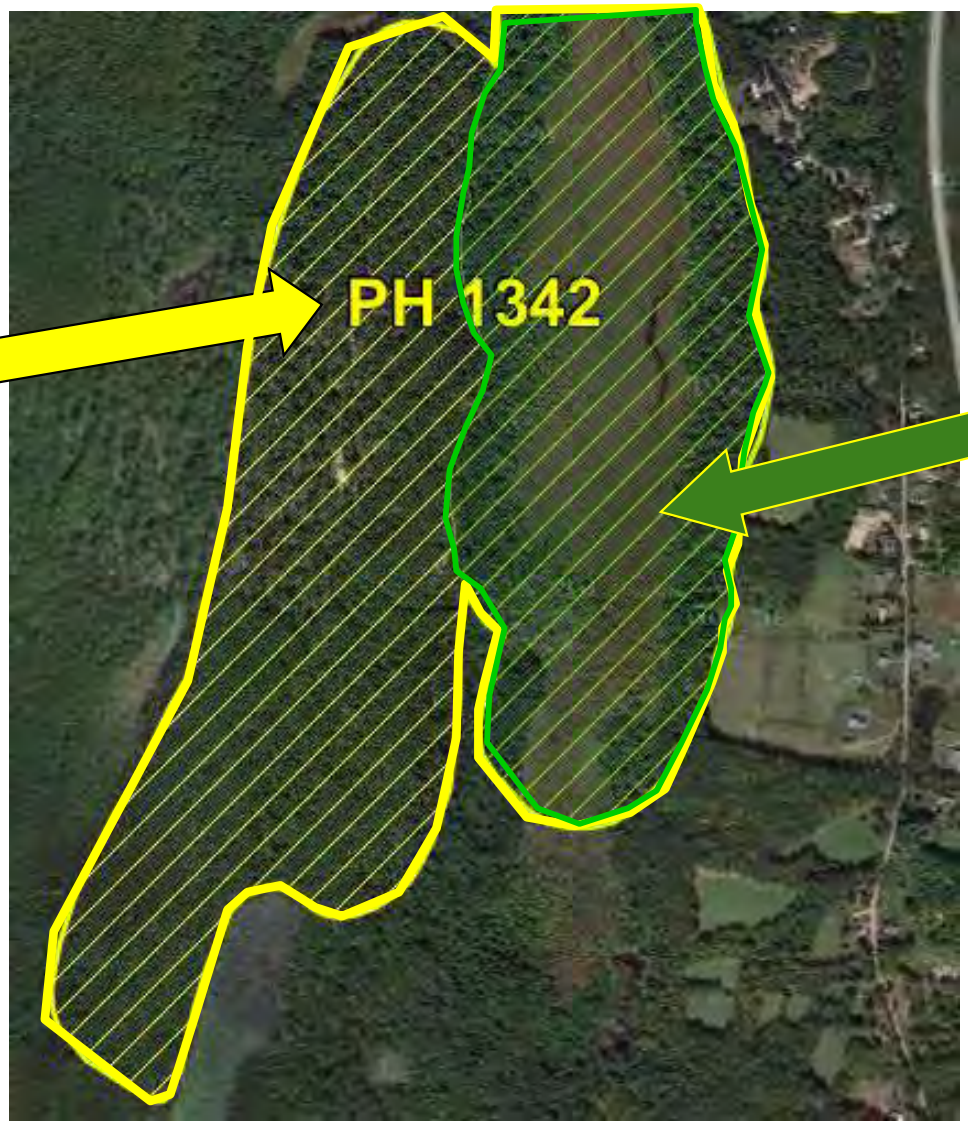
Marbled Salamander (T)

Priority vs. Estimated Habitat

Priority Habitat

Geographic extent of habitat for all state-listed species

- Both plants and animals
- Codified under MESA



Estimated Habitat

Geographical extent of habitat for state-listed wetland wildlife

- A sub-set of Priority Habitat
- No plants
- Codified under WPA

How do I know if property is mapped?

- PH/EH Maps available:
  - MassGIS
  - Online Viewer
  - Copies sent to Conservation Commissions, Building Inspectors & Planning Boards

www.mass.gov/nhesp

- Responsibility of the landowner and/or project proponent to determine if within PH/EH

Online Interactive Map

Regulatory Maps: Priority & Estimated Habitats

Priority and Estimated Habitat maps are used for determining whether or not a proposed project must be reviewed by the NHESP for MESA and WPA compliance.

View the most up to date Priority & Estimated habitats (15th Edition Natural Heritage Atlas, August 1, 2021): interactive map viewer

Priority Habitat

Priority Habitat is based on the known geographical extent of habitat for all state-listed rare species, both plants and animals, and is codified under the Massachusetts Endangered Species Act (MESA). Habitat alteration within Priority Habitats may result in a take of a state-listed species, and is subject to regulatory review by the Natural Heritage & Endangered Species Program.

CONTACT

Natural Heritage & Endangered Species Program

Address

MassWildlife Field Headquarters
1 Rabbit Hill Road, Westborough, MA 01581

Directions →

Phone

Main (508) 389-6360
Open M–F, 8 a.m.–4 p.m. (closed noon–12:30 for lunch)

Regulatory Review Inquiries

https://www.mass.gov/service-details/regulatory-maps-priority-estimated-habitats

Resources

- Online Guidance for MESA Reviews

https://www.mass.gov/how-to/how-to-file-for-a-mesa-project-review

- Pre-File Consultations

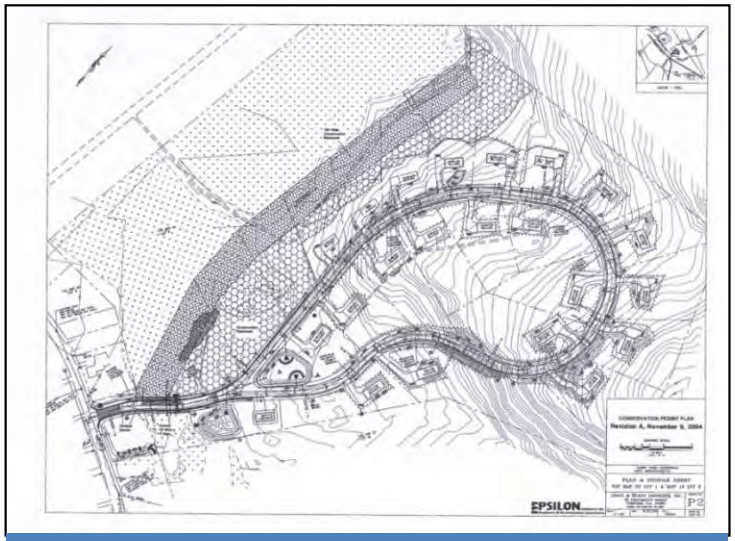
https://www.mass.gov/how-to/request-a-pre-filing-consultation

- Regional Point of Contact: Melany Cheeseman

  508-389-6357

  melany.cheeseman@mass.gov

What does it mean if a project is in Estimated and or Priority Habitat?



Project or Activity

Species and Habitat

Unless exempt, requires review under WPA and or MESA

MESA Exemptions

Exemptions – 321 CMR 10.14

- House additions, accessory structures, etc.
- Certain activities associated w/stormwater management
- Maintenance or repair of paved roads
- Vegetation management along utility/rail lines
- Agriculture and certain non-commercial forest management
- Certain habitat management activities

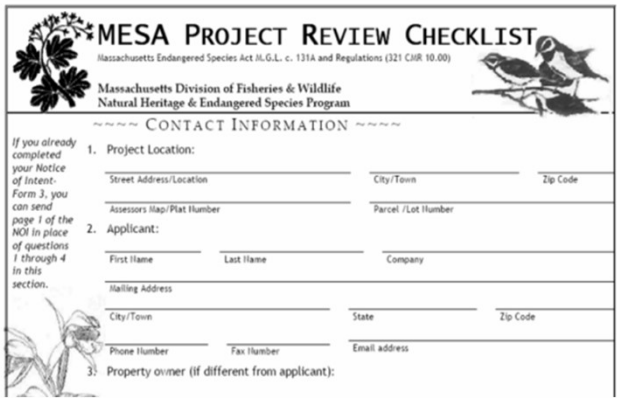
Grandfathering Provisions – 321 CMR 10.13(2)

Carex trichocarpa (T)

MESA / WPA Review Process

MESA Checklist (Outside Estimated Habitat)

- 30 days to determine if filing is complete
- Additional 60 days for determination
- Most reviews complete w/in 30 days



MESA PROJECT REVIEW CHECKLIST

Massachusetts Endangered Species Act M.G.L. c. 131A and Regulations (321 CMR 10.00)

Massachusetts Division of Fisheries & Wildlife
Natural Heritage & Endangered Species Program

~~~~ CONTACT INFORMATION ~~~~

If you already completed your Notice of Intent-Form 3, you can send page 1 of the NOI in place of questions 1 through 4 in this section.

1. Project Location:
   Street Address/Location | City/Town | Zip Code
   Assessors Map/Plat Number | Parcel /Lot Number
2. Applicant:
   First Name | Last Name | Company
   Mailing Address
   City/Town | State | Zip Code
   Phone Number | Fax Number | Email address
3. Property owner (if different from applicant):

Streamlined NOI (Estimated Habitat)

- Submit NOI with required MESA info to NHESP
- Most reviews complete w/in 30 days
- OOC issued after receiving NHESP determination, includes any rare species conditions

"Pre-Filing Consultations"
~~~~

MESA Review Outcomes

MESA

Insufficient Information → May require habitat assessment, surveys or other information.

Exempt / Grandfathered

No "Take"

"Take" – Avoided w/ Conditions
- Timing restriction
- Species protection plan
- Protective 'no touch' zones

Consult w/NHESP to redesign

"Take" → MESA Conservation & Management Permit

Allow "Take" + Mitigation

Spadefoot Toad (T)

Review Outcomes

Fiscal Year 22'

(7/1/21 – 6/30/22)

- No Take = 67.5%
- Take Avoided w/Conditions = 29.7%
- Take (w/CMP) = 2.8%

Review Outcomes

Mount Washington
7/2012-7/2022

- No Take = 3
- Take Avoided w/Conditions = 5
- Take (w/CMP) = 0

WPA Review Outcomes

WPA

Insufficient Information

"No Adverse Effect"

"Adverse" – Avoided w/ Conditions
- Timing
- Protective 'no touch' zones
- Erosion control

"Adverse"

MESA Conservation & Management Permit

Overcome presumption of "Adverse"

Diamond-backed Terrapin (T)

If a Project Results in a "Take"…

321 CMR 10.23 – Performance Standards for Conservation & Management Permits

1. Assess alternatives to minimize impacts
2. Impact insignificant proportion of local population
3. Implement conservation & management plan providing long-term net benefit to species

Diamondback Terrapin (T)
(hatchling)

Conservation & Management Plan

<u>Long-term net benefit</u> to species

Proportionate to harm / species

- Mitigation ratios (321 CMR 10.23(7))

May include:

- On / off-site habitat protection
- On / off-site habitat restoration / management
- Funding for conservation and or research

Barrens Buckmoth (SC)

"… better off"

QUESTIONS?

Resources

- Online Guidance for MESA Reviews

https://www.mass.gov/how-to/how-to-file-for-a-mesa-project-review

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