

Wetlands Policy: Coordinated Review Relating to Endangered Species

Procedures for Coordinated Review Under the Endangered Species and Wetlands Protection Regulations for State-Listed Wildlife in Wetlands

Effective Date: 5-1-2006

DWW Policy 06-1 (BRP/DWM/WWP 06-1)

Program Applicability: All Boston and regional BRP programs

Supersedes Policy: None

Approved by: [signed] Glenn Haas, Director, Division of Watershed Management

The Massachusetts Division of Fisheries and Wildlife's Natural Heritage and Endangered Species Program's ("Natural Heritage Program") recent revision of its regulations pursuant to the Massachusetts Endangered Species Act has prompted MassDEP to coordinate the implementation of the revised regulations with MassDEP's wetlands regulations. In an effort to improve administrative effectiveness and to protect the environment, MassDEP will coordinate the implementation of its wetlands regulations, specifically, its regulations regarding the protection of state-listed wildlife habitat in wetlands resource areas (estimated habitat) and the Natural Heritage Program's regulations.

Pursuant to 321 CMR 10.00, the Natural Heritage Program reviews any project proposed for state-listed species habitat. When a project is proposed in estimated habitat in wetland resource areas, it is also subject to MassDEP's wetlands regulations. In fulfilling its responsibilities under 321 CMR 10.00, the Natural Heritage Program considers whether a take will occur under 321 CMR 10.18 and whether it can be permitted under 321 CMR 10.23. A set of conditions that avoid a take under 321 CMR 10.18, will be presumed to not have an adverse effect on the habitat of state-listed wildlife species pursuant to 310 CMR 10.37 and 10.59. It makes sense for the Natural Heritage Program to make these determinations at the same time as it fulfills its obligations under MassDEP's wetlands regulations.

As provided in 310 CMR 10.37 and 10.59, when a project is proposed in estimated habitat, the issuing authority relies on the Natural Heritage Program's opinion as to whether a proposed project has any short or long-term effect on the habitat of the local population of any state-listed wildlife species. Accordingly, when the Natural Heritage Program makes a determination pursuant to 321 CMR 10.23, that a project may proceed pursuant to a conservation and management permit, this determination shall be presumed to satisfy the standard for no short or long-term adverse effect pursuant to the wetlands regulations (310 CMR 10.37 and 10.59.)

To facilitate this coordinated review, MassDEP will make available on its website to project applicants a form to request coordinated review under both programs. The issuing authority shall incorporate conditions in its order consistent with the conditions or determinations of the Natural Heritage Program.

At the conclusion of three years from the date of issuance of this policy, MassDEP will evaluate this policy to determine how well the coordinated review process has worked and whether changes should be made.