



## Areas of Critical Environmental Concern

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### Introduction

The Areas of Critical Environmental Concern (ACEC) Program was established in 1975 when the Massachusetts State Legislature authorized and directed the Secretary of Environmental Affairs to identify and designate “areas of critical environmental concern to the Commonwealth.” An ACEC is a formal state designation directed principally to the actions and jurisdictions of state environmental agencies. The Department of Conservation and Recreation (DCR) administers the ACEC Program on behalf of the Secretary. As of Spring 2007, there are 28 ACECs in 73 municipalities covering approximately 241,000 acres.

The ACEC Regulations (301 CMR 12.00) describe the procedures for the nomination, review, and designation of ACECs, as well as amendments to ACECs. The ACEC Regulations also direct the agencies of the Executive Office of Environmental

Affairs (in 2007 renamed Energy and Environmental Affairs, or EOEEA) to take actions, administer programs, and revise regulations in order to preserve, restore, or enhance the natural and cultural resources of ACECs (see the *ACEC Program* section below). The designation works through the existing state environmental regulatory and review framework.

Guidelines for implementing ACEC designation are not found in one set of laws or regulations. Rather, the purpose and goals of ACEC designation are implemented through a variety of state agency programs and regulations. For example, regulations administered by the Department of Environmental Protection (MassDEP), the Massachusetts Environmental Policy Act (MEPA) Office, and the Office of Coastal Zone Management (CZM) contain specific provisions regarding ACECs. These regulations and programs are described in the following pages.

*It is important to understand that the goals of ACEC designation are not achieved exclusively through state regulations.* In addition to the regulatory roles described in this guide, several state agencies and programs give priority attention to ACECs through non-regulatory means. For example, there are several state agency grant programs that often give priority to grant applications for projects within ACECs. Some state agencies actively participate in the review of ACEC nominations and in state reviews of proposed projects located within ACECs.

Examples of state programs that address ACECs are:

- The Self-Help, Urban Self-Help, and Land & Water Conservation Fund Programs, administered by the EOEEA Division of Conservation Services (DCS), give additional priority to community funding applications for projects located within ACECs. In addition, DCS administers the review of conservation restrictions, and the location of a conservation restriction within an ACEC can be a significant factor in qualifying for federal tax deductions for charitable contributions.
- The Agricultural Preservation Restriction (APR) Program administered by the Department of Agricultural Resources (DAR) gives additional

priority to funding applications for the acquisition of APRs located within ACECs.

- The Natural Heritage & Endangered Species Program (NHESP), administered by the Division of Fisheries and Wildlife, tracks state-listed rare species locations, protects rare species habitat, and oversees rare species management plans within ACECs. NHESP also provides technical assistance to landowners, communities, and other agencies. Many ACECs contain high concentrations of rare species or important natural communities.



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- CZM's Wetlands Restoration Program coordinates closely with the ACEC Program regarding the proactive restoration of wetlands within ACECs. For example, the Rumney Marshes ACEC Salt Marsh Restoration Plan and the Great Marsh Coastal Wetlands Restoration Plan are joint efforts of the two programs to identify and prioritize continued wetland restoration in these significant ecosystems.
- The Massachusetts Bays Program provides assistance to communities in the Massachusetts Bay and Cape Cod Bay watersheds to preserve, manage, and restore coastal resources. ACEC program staff coordinate stewardship activities with MBP staff regarding the nine coastal ACECs located in these areas.
- The Department of Environmental Protection (MassDEP) Drinking Water Program, Watershed Permitting Program, and the DCR Office of

Water Resources consider ACEC issues when reviewing water withdrawal permit applications pursuant to the Water Management Act.

- Solid Waste Regulations administered by the MassDEP Bureau of Waste Prevention Business Compliance Division require that assessments for existing landfills identify ACECs nearby and address potential impacts of a landfill on an ACEC.
- The site classification provisions of the Massachusetts Contingency Plan (310 CMR 40.00), administered by the MassDEP Bureau of Waste Site Cleanup, consider the proximity of a disposal site to an ACEC as part of the evaluation of the site's potential environmental impact. Disposal sites are locations where there has been a release of oil or hazardous materials to the environment.
- Site Selection Criteria for Low-Level Radioactive Waste Management Facilities prohibit the siting of such facilities within an ACEC.

*It is also important to understand what ACEC designation does not do.* It does not supersede local regulations or zoning, change or affect land ownership, allow public access on private property, or prohibit or stop land development.

The purpose of ACEC designation – the long-term preservation, management, and stewardship of critical resources and ecosystems – cannot be accomplished through state regulations or programs alone. The stewardship of these resources is a responsibility shared by all citizens. From a practical perspective, the goals of ACEC designation can be achieved only through cooperative and collaborative efforts involving all of us – private and public organizations, governmental agencies, local officials, civic and environmental organizations, and residents of ACEC communities.

Therefore we also recommend that people interested in the ACEC Program consult other program publications – especially the *ACEC Stewardship* fact sheet – and visit the ACEC Program website at:

- [www.mass.gov/dcr/stewardship/acec](http://www.mass.gov/dcr/stewardship/acec)

Links to further information about other state agencies, programs, and regulations can be obtained at the following websites:

- Executive Office of Environmental Affairs: [www.mass.gov/envir](http://www.mass.gov/envir)
- Coastal Zone Management (CZM) Office: [www.mass.gov/czm](http://www.mass.gov/czm)
- Massachusetts Environmental Policy Act (MEPA) Office: [www.mass.gov/envir/mepa](http://www.mass.gov/envir/mepa)
- Department of Environmental Protection (MassDEP): [www.mass.gov/dep](http://www.mass.gov/dep)

This regulatory summary is provided as a guide and reference. Questions regarding specific regulations and programs may be directed to the particular agency or program cited, or to ACEC Program staff. Please see the ACEC *Statewide Map and List* for specific ACEC designations, communities, and locations.



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## ACEC Program

### Agency

Department of Conservation and Recreation (DCR)  
Division of Planning and Engineering

### Program

ACEC Program

### Regulations

301 CMR 12.00: ACEC Regulations

### Statute

M.G.L. c.21A, s.2(7)

### Purpose

The statute authorizes and directs the Secretary of Energy and Environmental Affairs to identify and designate areas of critical environmental concern and to develop statewide policies regarding the acquisition, protection, and use of these areas. The ACEC Regulations establish a procedure for ACEC nominations and designations and a policy for Commonwealth actions within designated ACECs.

### Summary

The ACEC Regulations are promulgated by the Secretary of the Executive Office of Environmental Affairs (EOEEA), and identify the Secretary as responsible for the designation of ACECs and their oversight. The Department of Conservation and Recreation (DCR) administers the ACEC Program on behalf of the Secretary. DCR conducts the review of ACEC nominations; facilitates, supports, and coordinates actions to preserve, restore, and enhance ACECs; and prepares recommendations to the Secretary regarding designations and other program responsibilities.

ACECs are designated by the Secretary following a public nomination and review process. The specific nomination and review requirements are described in the ACEC regulations and other program materials. ACECs are usually nominated by municipal boards of selectmen, planning boards or conservation commissions, or by 10 citizens with support from municipal boards and commissions. The nomination and review process is designed to

educate the public about the significance and long-term stewardship of the resources and ecosystems in the nominated area. More detailed information is provided in the *ACEC Nomination Guidelines* fact sheet.

Following designation, the ACEC Program coordinates closely with other state agencies regarding the directives found in the ACEC Regulations for protection, management, and stewardship of ACECs. For example, ACEC Program staff are active in the MEPA review process and coordinate with other parties to provide comments on project proposals. Information, technical assistance, and a variety of collaboration and support is provided by ACEC Program staff to all levels of government, nongovernmental organizations, project proponents, and residents. More stewardship information can be found in the *ACEC Stewardship* fact sheet.

The effects of designation are spelled out in section 12.12 of the ACEC Regulations, as follows:

“Designation of an area as an ACEC shall have the following effects:

- (1) All EOEA agencies shall take action, administer programs, and revise regulations in order to:
  - (a) acquire useful scientific data on the ACEC;
  - (b) preserve, restore, or enhance the resources of the ACEC; and
  - (c) ensure that activities in or impacting on the area are carried out so as to minimize adverse effects on:
    1. marine and aquatic productivity,
    2. surface and groundwater quality,
    3. habitat values,
    4. storm damage prevention or flood control,
    5. historic and archaeological resources,
    6. scenic and recreational resources, and
    7. other natural resource values of the area.
- (2) All EOEA agencies shall subject the projects of federal, state, and local agencies and private parties to the closest scrutiny to assure that the above standards are met for any action subject to their jurisdiction.”

## CZM Program

### Agency

Massachusetts Office of Coastal Zone Management (CZM)  
Executive Office of Energy and Environmental Affairs (EOEEA)

### Program

Massachusetts Coastal Zone Management Program

### Regulations

301 CMR 20.00: Coastal Zone Management Program  
301 CMR 21.00: Coastal Zone Management Program Federal Consistency Review Procedures

### Statute

M.G.L. c.21A, ss.2,4A

### Purpose

The mission of the Massachusetts Office of Coastal Zone Management (CZM) is to balance the impact of human activities with the protection of coastal and marine resources through planning, public involvement, education, research, and sound resource management. CZM works to ensure that the diverse responsibilities of the Executive Office of Energy and Environmental Affairs (EOEEA) that affect the resources of the coastal zone are administered in a coordinated manner. CZM also ensures that federal activities within or which affect the Commonwealth’s coastal zone are undertaken in a manner consistent with the Massachusetts Coastal Zone Management Program Policies.

### Summary

CZM is the state agency responsible for the overall coordination and oversight of EOEEA agency actions within the designated coastal zone of the Commonwealth. CZM develops state policies to protect resources and manage development in the coastal zone, and provides technical assistance to federal, state, and local agencies, nongovernmental organizations, schools, and individuals. The agency works to implement coastal policies in several areas as set forth in the CZM Program Policies (301 CMR 21.98), including water quality, habitat, protected areas, coastal hazards, port and harbor infra-

structure, public access, energy, ocean resources, and growth management.

CZM's program policies rely on existing Massachusetts environmental statutes and implementing regulations for their authority. The agency reviews and comments on proposals for coastal development during the Massachusetts Environmental Policy Act (MEPA) review process. Through the federal Coastal Zone Management Act, CZM also ensures that all federal development activities, all federally licensed or permitted activities, or any federally funded activities in the Massachusetts coastal zone are consistent with state coastal policies.

In addition to the central Boston Office, CZM's Regional Technical Assistance Program focuses on five regions along the coast. Field staff offices for these regions are located in the following municipalities:

- North Shore Region (Salisbury to Revere)
  - in Gloucester
- Boston Harbor Region (Winthrop to Weymouth)
  - in Boston
- South Shore Region (Hingham to Plymouth)
  - in Scituate
- Cape Cod & Islands Region (inclusive)
  - in Barnstable
- South Coastal Region (Wareham to Seekonk)
  - in Lakeville



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## ACECs

CZM managed the coastal ACEC program until 1993 and administered the review and designation of 13 coastal ACECs. Although the Department of Conservation and Recreation now administers the statewide ACEC Program (for both inland and coastal areas), CZM continues to play an essential role in the implementation of ACEC goals and objectives in the coastal zone.

Under CZM's Program Policies (301 CMR 21.98), Protected Areas Policy #1 states:

"Assure preservation, restoration, and enhancement of complexes of coastal resources of regional or statewide significance through the Areas of Critical Environmental Concern (ACEC) Program."

CZM coordinates closely with DCR regarding all aspects of the ACEC program within the coastal zone through technical assistance, state environmental review, and federal consistency review. Supporting and assisting diverse community and regional projects and initiatives that promote ACEC stewardship is a high priority for CZM and DCR. Examples of these projects include developing management strategies and tools in the Great Marsh ACEC, preparation and implementation of the Rumney Marshes ACEC Salt Marsh Restoration Plan, and preparation of a Natural Resources Inventory and Land Protection Plan for the Weir River ACEC. Both DCR and CZM staff provided technical assistance in the development of the resource management plans for the Neponset River Estuary ACEC and the Pleasant Bay ACEC, which were approved by the Secretary of Environmental Affairs. DCR and CZM staff also provide technical assistance to communities and citizens interested in nominating potential ACECs in the coastal zone.

## MEPA Office

### Agency

Massachusetts Environmental Policy Act (MEPA)  
Office  
Executive Office of Energy and Environmental  
Affairs (EOEEA)

### Regulations

301 CMR 11:00: MEPA Regulations

### Statute

M.G.L. c.30, ss. 61-62H [Massachusetts  
Environmental Policy Act (MEPA)]

### Purpose

The statute requires that state agencies study the environmental consequences of their actions, including permitting and financial assistance, and take all feasible measures to avoid, minimize, and mitigate damage to the environment.

### Summary

To meet the purpose of the statute, MEPA requires that state agencies “use all practicable means and measures to minimize damage to the environment,” by studying alternatives to the proposed project and by developing enforceable mitigation commitments that become permit conditions for the project if and when it is permitted.

MEPA generally applies to projects above a certain size that involve some state agency action. That is, they are either proposed by a state agency or are



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proposed by municipal, nonprofit, or private parties and require a permit, financial assistance, or land transfer from state agencies.

MEPA review is not a permitting process. MEPA requires public study, disclosure, and development of feasible mitigation if environmental damage is unavoidable by a proposed project. It does not pass judgement on whether a project is environmentally beneficial, or whether a project can or should receive a particular permit. Those decisions are left to the permitting agencies. MEPA review occurs before state permitting agencies act to ensure they know the environmental consequences of their actions.

MEPA provides the mechanism through which this environmental information is collected and a mitigation mandate is executed. The process encourages comments from the public and from state, regional, and local agencies. Proponents of projects subject to MEPA review must file an Environmental Notification Form (ENF) with the Secretary of Energy and Environmental Affairs through the MEPA Office. The MEPA Office publishes notices of ENFs in *The Environmental Monitor*, which is issued twice a month. A twenty-day comment period follows, during which the Secretary’s staff hold a site visit and consultation session and receive agency and public comments. Ten days after the close of the ENF comment period, the Secretary determines whether an Environmental Impact Report (EIR) is required. If no EIR is required, agencies may act on the project. If an EIR is required, it is prepared by the project proponent and submitted to the Secretary. The EIR is reviewed again by the public and agencies. After completion of a final EIR, agencies may act on the project.

The Secretary makes all determinations regarding the need for and adequacy of ENFs and EIRs and for compliance with requirements of the MEPA Regulations. Project proponents may request an opinion of the Secretary as to whether a project requires a MEPA review. Proponents subject to this review are encouraged to consult with MEPA prior to filing in order to facilitate the review process.

The staff of the MEPA Office, located within the

Office of the Secretary of Energy and Environmental Affairs, are responsible for day-to-day implementation of the MEPA review process. Their job is to solicit comments from the public and agencies; represent the Secretary at the public consultation sessions on projects; coordinate project review with the proponents and their consultants, and with interested agencies, municipalities, and citizens; and make a recommendation to the Secretary regarding the need for and adequacy of environmental documentation submitted for a project.

### **ACECs**

ACECs are addressed in the MEPA regulations at 301 CMR 11.03(11). The proponent of any project (as defined by the MEPA regulations) located within an ACEC must file an Environmental Notification Form (ENF), unless the project consists solely of one single family dwelling. As stated above, projects subject to MEPA must involve some state agency action – that is, they are either proposed by a state agency or are proposed by municipal, nonprofit, or private parties and require a permit, financial assistance, or land transfer from state agencies.

What this means in practical terms is that projects subject to MEPA jurisdiction, located within ACECs, require closer scrutiny than projects located outside of ACECs. Any such project located within an



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ACEC, regardless of size (unless it consists solely of one single family dwelling), must undergo MEPA review. State, federal, regional, and municipal agencies, as well as private organizations and individuals, all have the opportunity to provide public comment regarding these projects and potential environmental impacts.

Projects that qualify as *routine maintenance projects* are not required to undergo MEPA review. These projects are defined as any maintenance work or activity carried out on a regular or periodic basis in a manner that has no potential for damage to the environment, or for which performance standards have been developed that avoid, minimize, or mitigate potential environmental impacts to the maximum extent practicable.

Examples of *projects proposed by state agencies* that require the filing of an ENF when located within an ACEC are:

- highway improvement projects proposed by the Massachusetts Highway Department (MassHighway),
- airport improvements funded by the Massachusetts Aeronautics Commission, or
- park improvement projects proposed by the Massachusetts Department of Conservation and Recreation.

MEPA review is not required for planning projects undertaken or funded by state agencies unless the plan includes specific improvement or development projects. If sufficient detail about these improvement or development projects is included as part of MEPA review of a plan, future MEPA review is not required for those projects. State agencies are encouraged to develop management plans for properties and facilities located within ACECs to help ensure that operations and proposed improvements are consistent with sound resource management goals.

An example of a *land transfer from a state agency* is the transfer of a utility easement to a public or private entity over land owned by a department, division, or agency of the Commonwealth.

Examples of *projects receiving state financial assistance* that require the filing of an ENF when located within an ACEC include:

- state grants to communities or citizen associations for chemical treatment of aquatic vegetation for lakes or ponds, or
- state grants to communities for the construction of new school facilities or road improvements that do not qualify as routine maintenance.

Examples of *state permits for projects* located within ACECs that require the filing of an ENF are:

- state highway access permits from MassHighway,
- requests for a Wetlands Protection Act Regulations Superseding Order of Conditions from the Department of Environmental Protection (MassDEP),
- Individual Water Quality (401) Certificates from MassDEP, or
- sewer extension permits from MassDEP.

Finally, as mentioned above, agencies or persons may request an Opinion from the Secretary as to whether a project requires a MEPA review. Project proponents are also encouraged to contact ACEC Program staff for clarification about whether a proposed project is located within an ACEC boundary.



GREAT MARSH

## MassDEP Wetlands Protection Act Regulations

### Agency

Department of Environmental Protection  
(MassDEP)  
Bureau of Resource Protection  
and  
Local Conservation Commissions

### Program

Wetlands and Waterways Program

### Regulations

310 CMR 10.00; Wetlands Protection Act  
Regulations

### Statute

M.G.L. c.131, s.40 (Wetlands Protection Act)

### Purpose

The purpose of the Wetlands Protection Act is to protect wetlands resource areas of the Commonwealth. The Act requires that no one shall remove, fill, dredge, or alter any of the coastal or freshwater (inland) wetlands resource areas listed in the statute without filing a written Notice of Intent to do so with the local Conservation Commission. Conservation Commissions are required to issue an Order of Conditions designed to protect the specific interests stated in the Act.

### Summary

The Wetlands Protection Regulations are divided into three parts: procedural requirements for all projects (Part I: 310 CMR 10.01-10.10); regulations for work in coastal wetlands (Part II; 310 CMR 10.21-10.37); and regulations for work in inland wetlands (Part III: 310 CMR 10.51-10.60). The Act defines wetlands as Resource Areas such as coastal beaches, dunes and banks; salt marshes; bordering vegetated wetlands; land under streams, rivers, ponds and lakes; land subject to flooding; and river-front areas.

Under the Wetlands Protection Regulations performance standards for proposed activities have been established specific to each particular resource area. Although the MassDEP promulgates the



Wetlands Protection Regulations, local Conservation Commissions have the authority and responsibility for initial reviews of projects within the jurisdiction of the Wetlands Protection Act. Conservation Commissions issue Orders of Conditions for such projects to protect the interests and functions described in the statute and regulations. Decisions of Conservation Commissions may be appealed to, or by, the MassDEP. MassDEP then conducts its own review of the proposed activity.

### **ACECs**

In issuing the designation of an ACEC, the Secretary of Energy and Environmental Affairs may make a finding that the wetland resource areas within the ACEC are significant to specific interests of the Wetlands Protection Act – the protection of: public and private water supply, land containing shellfish, fisheries, and wildlife habitat; flood control, storm damage prevention, and prevention of pollution (most ACEC designations include this finding). Under the Wetlands Protection Regulations for coastal wetlands resource areas, this finding requires that significance shall be presumed by the local Conservation Commissions and MassDEP and incorporated into the review of any proposed project (310 CMR 10.24(5)(a)).

Furthermore, for coastal resource areas within an ACEC, the performance standard is raised to one of no adverse effect on the interests of the Act, with the exception of “maintenance dredging for navigational purposes affecting land under the ocean” (310 CMR 10.24(5)(b) and 10.25(4)).

A higher performance standard also applies to the inland (freshwater) wetlands resource area known as “Bordering Vegetated Wetland.” As defined in the Wetlands Protection Regulations, Bordering Vegetated Wetlands (BVW) are “freshwater wetlands which border on creeks, rivers, streams, ponds and lakes.” Outside of an ACEC, there is the potential for work to be permitted which results in limited loss of BVW in certain cases. Within an ACEC, BVW cannot be destroyed or impaired such that potential projects are prohibited from creating the



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loss of any BVW (310 CMR 10.55(4)(e)1). This standard for BVW applies to all ACECs.

However, ACEC designation does not prohibit work affecting BVW if such work can be authorized under any section of the Wetlands Protection Regulations, including if the presumption of significance can be rebutted, if the proposed project is for maintenance of permitted stormwater structures (310 CMR 10.55(4)(e)4), or if the proposed project can meet the specific performance standards for “limited projects” listed at 310 CMR 10.53(3). If a project in an ACEC qualifies as a limited project, alteration of BVW may be permitted under 310 CMR 10.53(3), although no limited project may have any adverse effect on specified habitat sites of rare species. For the specific “limited project” provision for the construction, reconstruction, operation, or maintenance of water-dependent projects (310 CMR 10.53(1)), the project must still meet performance standards for impacts to BVW (except the ACEC provision for no impairment, 310 CMR 10.55(4)(e)3). That is, a water-dependent limited project impacting BVW may not impact more than 5000 square feet with replication, or 500 square feet if a “finger-like” wetland. For all reviews of limited projects, Conservation Commissions’ discretion in the evaluation of projects should be based on a balancing of the magnitude of the wetland impacts proposed against the significance of the particular wetland to the interests of the Wetlands Act, the availability of alternatives, minimizing of adverse impacts, and mitigation provided (310 CMR 10.53(3)).

*Note:* Within an ACEC, an appeal of a local Order of Conditions (i.e., a request for a Superseding Order of Conditions, or SOC) requires the filing and review of an Environmental Notification Form (ENF) pursuant to the Massachusetts Environmental Policy Act (MEPA) Regulations, before MassDEP can act on the SOC (with the exception of projects that consist of one single family dwelling – see *MEPA Regulations* section above).

## MassDEP Inland & Coastal Wetlands Restrictions

### Agency

Department of Environmental Protection  
(MassDEP)  
Bureau of Resource Protection

### Program

Wetlands and Waterways Program  
Inland and Coastal Wetlands Restrictions

### Regulations

310 CMR 12.00: Rules for Adopting Coastal Wetlands Orders  
310 CMR 13.00: Rules for Adopting Inland Wetlands Orders

### Statute

M.G.L. c.130, s.105; c.131, s.40A (Coastal and Inland Wetlands Restriction Acts)

### Purpose

The purpose of the Acts is to protect coastal and inland wetlands resource areas proactively on a town-by-town and regional basis. (By contrast, the Wetlands Protection Act, M.G.L. c.131, s.40, and its Regulations, 310 CMR 10.00, address the protection of wetlands resource areas on a site-specific basis in response to permit applications.) An “Order of Restriction” is a protective mechanism used to regulate, restrict, or prohibit certain activities or uses in wetlands resource areas. A restriction order does not affect property ownership, nor is the public granted any rights of access or trespass on private property. A deed restriction only affects certain land use practices on the property.

### Summary

The Coastal and Inland Wetlands Restriction Program was administered initially by the State Department of Natural Resources, later renamed the Department of Environmental Management. The Department of Environmental Protection (MassDEP) Wetlands and Waterways Program has administered the program since 1983. The total land area that has been subject to wetlands restrictions, adopted between 1966 and 1987, includes 72,232 acres in 58 communities – approximately 64,148 acres of coastal wetlands and 8,084 acres of inland wetlands. MassDEP and local conservation commissions have copies of the maps and orders in communities where wetlands have been restricted. There are no current plans for placing additional wetlands restrictions in any communities.

### ACECs

The regulations for both coastal and inland restrictions (sections 12.01(4) and 13.01(4), respectively) require the administering state agency to prepare a schedule for restricting inland and coastal wetlands located within designated ACECs. Most coastal wetlands within ACECs currently have Orders of Restriction in place. A few inland wetlands within ACECs have Restrictions in place. As mentioned above, there are no current plans for expanding the amount of wetlands under Inland or Coastal Restrictions. A list of communities with Inland and/ or Coastal Restrictions is available online at the MassDEP website or from ACEC Program staff.



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## MassDEP Waterways Regulations

### Agency

Department of Environmental Protection  
(MassDEP)  
Bureau of Resource Protection

### Program

Wetlands and Waterways Program

### Regulations

310 CMR 9.00: Waterways Regulations

### Statute

M.G.L. c.91, ss.1-63 (Public Waterfront Act); M.G.L. c.21A, ss.2,4,8 & 14

### Purpose

The purpose of the Public Waterfront Act, MGL Chapter 91, is to protect and preserve the public's interest in tidelands, Great Ponds, and nontidal rivers and streams in accordance with the public trust doctrine, as established by the Colonial Ordinances of 1641-47, subsequent statutes including the Public Waterfront Act, and case law of Massachusetts.

### Summary

Chapter 91 jurisdiction extends to activities in both coastal and inland areas, including construction, dredging, and filling in tidelands, Great Ponds, and certain rivers and streams. The Waterways regulations are based on Massachusetts General Law Chapter 91, which dates back to the earliest days of the Massachusetts Bay Colony. Through Chapter 91 the Commonwealth seeks to preserve and protect public rights in tidelands, Great Ponds, and certain rivers and streams by ensuring that these waterways are used only for water-dependent purposes or serve a public purpose. Anyone proposing to place fill, build or alter structures, change the use of structures, or dredge in tidelands and other areas subject to Chapter 91 jurisdiction must have a valid Chapter 91 license or permit prior to performing such work.

Coastal tidelands are defined as present and former submerged lands and tidal flats lying between the present or historic high water mark (whichever is

farther landward) and the seaward limit of state jurisdiction. In regard to inland areas, projects in Great Ponds and certain navigable rivers and streams are subject to Chapter 91 jurisdiction.

The jurisdiction of the Waterways Regulations overlaps with the jurisdiction of the Wetlands Protection Act Regulations (310 CMR 10.00). The Wetlands and Waterways Program coordinates the review of Chapter 91 licenses and permits with Wetlands reviews and defers final decisions regarding Waterways applications until the Wetlands review is completed.



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### ACECs

The Waterways Regulations require higher environmental standards for certain Chapter 91 projects located within ACECs, with the goal of protecting designated critical resources from unnecessary encroachments by fill and structures. The regulations do not allow new fill in ACEC waters. They also place stricter limits on new structures. Sections 310 CMR 9.32(1)(e) and (2)(d) describe these restrictions. Proposed privately owned structures for water-dependent use below the high water mark, such as private piers, will be eligible for a license provided that such structures are consistent with an ACEC resource management plan that has been adopted by the municipality and approved by the Secretary of Energy and Environmental Affairs. Without an approved resource management plan, private piers and other water-dependent structures built after October 4, 1990 are prohibited. When a resource management plan is approved, private

structures must be consistent with that plan. This regulatory provision applies to such private water-dependent structures in ACECs that are proposed or that were built after 10/4/90 and have not yet been authorized under Chapter 91.

The Secretary of Energy and Environmental Affairs approved policy guidelines for the review and approval of ACEC Resource Management Plans in 1996. To date, two ACEC Resource Management Plans (RMPs) have been prepared and subsequently approved by the Secretary, the Neponset River Estuary ACEC RMP in 1996 and the Pleasant Bay ACEC RMP in 1999.

Higher standards are also required regarding dredging and disposal activities within ACECs (section 9.40(1)(b)). Improvement dredging, except for the sole purpose of fisheries or wildlife enhancement, is prohibited within an ACEC. Maintenance dredging remains eligible for a permit. Also, the regulations prohibit the disposal of dredged material within an ACEC, except for the purposes of beach nourishment, dune stabilization with proper vegetative cover, or the enhancement of fishery or wildlife resources.

## MassDEP 401 Water Quality Certification Program

### Agency

Department of Environmental Protection  
(MassDEP)  
Bureau of Resource Protection  
and  
Local Conservation Commissions

### Program

Wetlands and Waterways Program  
401 Water Quality Certification Program

### Regulations

314 CMR 9.00: 401 Water Quality Certification for Discharge of Dredged or Fill Material, Dredging, and Dredged Material Disposal in Waters of the United States within the Commonwealth (see also Preface to the Revisions of 314 CMR 9.00 401 Water Quality Certification Regulations);

## 314 CMR 4.00 Massachusetts Surface Water Quality Standards

### Statute

M.G.L. c.21, ss.2, 4, 8, 14 & 26-53

### Purpose

The purpose of the 401 Water Quality Certification Regulations is to certify that proposed discharges of dredged or fill material, dredging, and dredged material disposal in waters of the United States within the Commonwealth will comply with the Surface Water Quality Standards (314 CMR 4.00) and other appropriate requirements of state law.

### Summary

Section 401 of the Federal Clean Water Act requires that anyone proposing any activity that will result in a discharge to waters or wetlands subject to federal jurisdiction is required to obtain a state certification that the project will comply with state water quality standards. A 401 Water Quality Certificate issued by the Department of Environmental Protection (MassDEP) is a determination that the proposed activity will not violate the Massachusetts Surface Water Quality Standards (301 CMR 4.00). The Surface Water Quality Standards designate uses of the various state waters, prescribe minimum criteria to sustain the designated uses, and set forth requirements to achieve designated uses and maintain existing water quality (see *Surface Water Quality Standards* section below).



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Filing requirements under the Water Quality Certification regulations are dependent on the size of the impact and the type of the resource to be impacted. For projects with minor impacts, activities can proceed under a local Order of Conditions (see *Wetlands Protection Act Regulations* section above) and project proponents are not required to submit an application for certification. However, for activities with large impacts or discharges to Outstanding Resource Waters or other sensitive resources, proponents are required to submit an application to MassDEP for 401 review. The criteria for evaluation of applications are designed to avoid wetlands impacts and to minimize and mitigate any unavoidable impacts.

### **ACECs**

ACECs include water bodies and wetlands subject to classification under the Surface Water Quality Standards, many of which have been designated Outstanding Resource Waters (ORWs). Proposed activities within ORWs require a 401 review and certification from MassDEP, in addition to an Order of Conditions pursuant to the Wetlands Protection Regulations.

As a general rule discharges to certified vernal pools and to areas within 400 feet of a public water supply reservoir are prohibited without a variance, regardless of whether those resources (both classified as ORWs) are within an ACEC. Discharges to other ORWs may be permitted following an alternatives analysis and minimization and mitigation of any adverse impacts. Water-dependent facilities in ORWs that are located within an ACEC may be enlarged if the enlargement is consistent with a Resource Management Plan locally adopted and approved by the Secretary provided that any fill or structure associated with the enlargement activity is located entirely within an area of previously filled tidelands [see 314 CMR 9.06(3)(k)]. Such proposed enlargements may include improvement dredging if the sole purpose is to provide fisheries or wildlife enhancement as required by 314 CMR 9.07(1)(k)(5) and the Waterways regulations at 310 CMR 9.40(1).

All ORWs, including those located within ACECs, are listed in the Surface Water Quality Standards at

314 CMR 4.00. A list of ORWs located within ACECs can also be obtained from ACEC Program staff.

*Note:* Within an ACEC, an application for 401 Water Quality Certification requires the filing and review of an Environmental Notification Form (ENF) pursuant to the MEPA Regulations, before MassDEP can act on the Certificate (with the exception of projects that consist of one single-family dwelling – see *MEPA Regulations* section above).

## **MassDEP Surface Water Quality Standards**

### **Agency**

Department of Environmental Protection  
(MassDEP)  
Division of Watershed Management

### **Program**

Division of Watershed Planning

### **Regulations**

314 CMR 4.00: Massachusetts Surface Water Quality Standards

### **Statute**

M.G.L. c.21, s.27

### **Purpose**

The purpose of the Surface Water Quality Standards is to meet federal and state goals to restore and maintain the chemical, physical, and biological integrity of the surface water resources of the Commonwealth. Surface waters are all waters other than groundwaters within the jurisdiction of the Commonwealth, including, without limitation, rivers, streams, lakes, ponds, springs, impoundments, estuaries, wetlands, coastal waters, and vernal pools certified by the Massachusetts Division of Fisheries and Wildlife.

### **Summary**

The Surface Water Quality Standards designate the most sensitive uses for which the various waters of the Commonwealth shall be enhanced, maintained, and protected; prescribe the minimum water quality criteria required to sustain these uses; and contain

regulations necessary to achieve these uses and maintain existing water quality including, where appropriate, the prohibition of discharges. The regulations include a classification and maps of waters of the Commonwealth by water basin. These standards are used to guide the issuance of surface water quality discharge permits and their subsequent implementation (see *401 Water Quality Certification Program* section above). The standards and classification of these regulations are reviewed and, where necessary, revised every three years.

### **ACECs**

The most stringent water quality antidegradation standards are reserved for waters designated as Outstanding Resource Waters (ORWs). According to section 4.04(3), "These waters constitute an outstanding resource as determined by their outstanding socio-economic, recreational, ecological, and/or aesthetic values. The quality of these waters shall be protected and maintained."

For most of the ACECs designated from 1975 through 1989 the current Surface Water Quality Standards list nearly all waters located within those ACECs as ORWs. For ACECs designated subsequent to 1989 some surface waters are listed as ORWs.



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These surface waters are given this regulatory status as ORWs because they are listed as Class A Public Water Supplies, rather than as a result of ACEC designation.

The Department of Environmental Protection (MassDEP) has developed guidelines for the public nomination and review of proposed ORWs that meet criteria other than Public Water Supply. Further information regarding the classification of waters within ACECs, the nomination of proposed ORWs, and the schedules and procedures for periodic revisions of the Surface Water Quality Standards can be obtained from the MassDEP.

## **MassDEP Solid Waste Assignment Regulations**

### **Agency**

Department of Environmental Protection  
(MassDEP)

Bureau of Waste Prevention, Business Compliance  
Division  
and  
Local Boards of Health

### **Program**

Regulatory Standards and Outreach (Waste Branch)

### **Regulations**

310 CMR 16.00: Site Assignment Regulations for  
Solid Waste Facilities

### **Statute**

M.G.L. c.21A, ss.2 and 8; c.111, ss.150A and  
150A1/2

### **Purpose**

The purpose of the statute is to provide procedures and criteria for the siting of solid waste management facilities. The siting of facilities is intended to be subject to consistent standards and to provide for the protection of public health, safety, and the environment, as well as to provide for integrated solid waste management systems which maximize material reuse and conservation of natural resources.

## Summary

The regulations are divided into four parts and describe the responsibilities and roles of local boards of health and MassDEP in siting solid waste management facilities. The regulations define these facilities as “an established site or works, and other appurtenances thereto, which is, has been, or will be used for the hauling, storage, transfer, processing, treatment, or disposal of solid waste including all land, structures, and improvements which are directly related to solid waste activities.”

## ACECs

These regulations, under general site suitability criteria (section 16.40(4)(d)), prohibit the siting of solid waste management facilities within an ACEC. The regulations also prohibit the siting of a facility located outside of, but adjacent to an ACEC, if such a siting “would fail to protect the outstanding resources of an ACEC.” The MassDEP site assignment application form includes a section that must address the location and potential impacts of the proposed site in regard to ACECs.



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*For more detailed information regarding the ACEC Program, including ACEC maps, resource summaries, and designation documents, as well as the publications mentioned above, please contact ACEC Program staff at the Department of Conservation and Recreation:*

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*or access the ACEC Program website at*  
[www.mass.gov/dcr/stewardship/acec](http://www.mass.gov/dcr/stewardship/acec)



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