

Wetlands Protection Act
Frequently Asked Questions
Courtesy of MACC

What is the Massachusetts Wetlands Protection Act?

The Massachusetts Wetlands Protection Act ([General Laws Chapter 131, §40](#); the Act) protects important water-related lands such as wetlands ("swamps"), floodplains, riverfront areas, and other areas from destruction or alteration. Most work proposed to be done in those areas requires a permit (known as an Order of Conditions) from the local conservation commission.

Regulations for the Act ([310 CMR 10.00](#)), and [related guidance and policy documents](#), are issued by the Massachusetts Department of Environmental Protection (MA DEP).

Many cities and towns have adopted local zoning or non-zoning wetland ordinances or bylaws that are stricter than the Act. Applications for work in wetland resource areas covered by state and local wetland laws are usually processed together by the conservation commission.

What is a wetland?

Wetlands are land areas that contain surface water all or part of the time, as well as some adjacent land areas. Legally the term includes not only areas we typically think of as wetlands, such as cattail marshes and red maple swamps, but also intermittent streams, floodplains, and other areas that may be dry for a significant portion of the year. The Act specifically regulates activities in or near these areas.

The most commonly regulated wetlands are bordering vegetated wetlands (BVWs), which are wetlands that share a border with a stream, pond or lake.

What is a floodplain?

A floodplain is a type of wetland resource area that floods following storms, prolonged rainfall, or snow-melt. Three types of floodplain areas are protected under the Act: coastal areas, areas bordering rivers and streams, and certain isolated depressions that flood at least once a year. The first two areas are defined by the 100-year floodplain - the upper boundary of the area which floods on average once every 100 years.

What other areas are protected?

In addition to BVWs and floodplains, the Act also covers banks, dunes, beaches, vernal pools, land under lakes and ponds, and riverfront area (land under or within 200-feet of rivers and streams -- or 25 feet of some urban rivers -- that flow year round). Technical definitions are found in the law and its accompanying regulations.

Many wetland resource areas are defined by an abundance of wetland plants, hydrology, or soil type. Riverfront resource areas (land within 200 feet of rivers or within 25 feet of some urban rivers) are in most cases measured from the top of the bank of the river or stream.

What is a buffer zone?

A buffer zone is the area of land within 100 feet of coastal banks, inland banks, freshwater wetlands, coastal wetlands, tidal flats, beaches, dunes, marshes, and swamps. Work (activity) in a buffer zone could have an impact on the nearby wetland, depending on the type and location of the work and the wetland. Thus, many activities done in a buffer zone (other than minor activities set forth in the regulations and exempt activities) are subject to regulation under the Act and require prior approval by the conservation commission. A conservation commission may impose conditions or limits on activity done in a buffer zone so that the nearby wetland is protected.

Why are wetlands and other water resource areas important?

More than half of our country's original wetland acreage has been lost to agricultural, commercial, and residential development. The cost of this loss in degraded water quality, increased storm damage, and depleted fish, wildlife, and plant populations has been well documented.

In their natural state, wetlands provide many free services to the community. Low areas serve as flood ways to convey storm and other flood waters safely away, and act as buffers to prevent damage to nearby roads and buildings. Naturally forested riverfront areas slow flood waters and trap sediment and debris. These functions minimize the need for extensive (and often expensive) engineered flood management systems and seawalls. Wetlands also provide temporary storage of floodwaters, allowing floods to recede slowly and, in fresh water wetlands, to recharge groundwater.

Directly or indirectly, wetlands are often sources of public or private drinking water supply. In addition, wetlands and vegetated riverfront lands help to purify the waters they receive from roads, agricultural runoff, and other sources. They serve as natural settling areas where soils and vegetation trap sediments that bind and, in some cases, break down pollutants into nontoxic compounds. For example, the sediments under marsh vegetation absorb lead, copper, and iron. Wetlands and riverfront lands retain nitrogen and phosphorus compounds which otherwise would foster nuisance plant growth and degrade fresh and coastal waters.

Wetlands are valuable to wildlife, providing food, breeding areas, and protective cover. Naturally vegetated riverfront lands also provide essential travel corridors for many species. Shellfish beds and commercial and recreational fisheries are dependent on good water quality and healthy coastal and inland wetlands.

Floodplains are protected because they provide "storage" for floodwaters. Alteration of the land that reduces flood storage capacity may displace floodwaters and cause greater flooding elsewhere. Unfortunately there are too many examples of houses flooded and even lives lost through the cumulative effect of many people filling in a floodplain over the years. Floodplains are also valuable for wildlife habitat.

Banks serve as buffers for landowners against storm damage. Vegetated banks bind the soil, preventing erosion caused by water flow.

Beaches, dunes, and riverbanks are dynamic systems that are continually shifting. In addition to preventing storm damage, coastal banks and dunes can naturally replenish beaches. Left in an undisturbed state, banks and dunes provide the same replenishment as truckloads of sand, but at much less cost. Construction near banks and dunes must be planned carefully to allow this natural shifting to occur.

What activities are prohibited in wetlands, riverfront areas, and other resource areas?

Under the Act no one may "remove, fill, dredge, or alter" any wetland, floodplain, bank, land under a water body, land within 100 feet of a wetland, or land within 200 feet of a perennial stream or river (25 feet of a few urban rivers), without a permit (known as an Order of Conditions) from the local conservation commission that protects the wetland "interests" identified in the Act. The "interests" or values protected by the Act are: flood control; prevention of storm damage; prevention of pollution; and protection of fisheries, shellfish, groundwater, public or private water supply, and wildlife habitat. The term "alter" is defined to include any destruction of vegetation, or change in drainage characteristics or water flow patterns, or any change in the water table or water quality. The wetland regulations prohibit most destruction of wetlands and naturally vegetated riverfront areas, and require replacement of flood storage loss when floodplains are filled.

What activities are allowed?

Most activities, such as construction, landscaping, and grading, require a permit. Some activities, such as normal maintenance, are allowed without a permit.

Normal maintenance and improvement of land currently in agricultural use is exempt from the provisions of the Act. Preparation of new land for agricultural use is not exempt. Silviculture harvesting is exempt if the landowner has obtained a forest cutting permit from the Department of Conservation and Recreation's regional forester.

How can I find out if my property is in or near a wetland resource area?

Some areas, such as rivers, streams, ponds, wooded swamps, bogs, and cattail marshes are easily recognizable. Your conservation commission may be able to assist you in identifying wetlands on your property. Distinguishing and delineating some wetland and water resource areas can be more difficult and may require the services of a botanist or wetland scientist. If you wish to develop your land, the wetlands, floodplains, or other regulated areas on or near your property must be mapped; there are many engineering firms and wetlands consultants that provide that service.

Floodplain maps issued by the Federal Emergency Management Agency (FEMA) under the national flood insurance program show the floodplains associated with major streams. Unfortunately, the maps are not always complete or up to date, and floodplain areas are not always indicated. If your property lies near a stream or in a low-lying area, there is a chance that part of it is sometimes flooded. In most cases a civil engineer or hydrologist must calculate the flood elevation.

What must I do if I want to conduct a regulated activity in or near any of the resource areas protected by the state Act?

Contact your conservation commission for further information on the law and how it applies to the particular project. Regulations issued under the Act should also be consulted because they contain specific standards that your project must meet to be approved. Local wetland bylaws/ordinances should also be reviewed.

For small projects located entirely in the 100-foot wetlands buffer zone (but not within 200-feet of a perennial stream or river) you may submit a Request for Determination of Applicability (RDA) with a plan, sketch or other description of the work to be done, showing any measures you plan to take to protect nearby wetlands from alteration. If the project is determined to have no wetlands impact, you will be given permission to proceed as soon as a 10-day appeal period passes. Certain small projects are exempt.

If the project may impact wetlands, banks, dunes, lands within 200-feet of a river or perennial stream or other resource areas, you may file a formal application known as a "Notice of Intent" (NOI) with the conservation commission. A NOI is a formal presentation carefully prepared, usually with the assistance of a civil engineer and wetlands consultant, according to the standards and criteria defined in the Act and Regulations, and showing in detail all aspects of the proposed project. The commission will set a time for a public hearing on your project and will advertise the hearing in the local paper at your expense. Once the hearing is completed and closed, the commission must issue its decision, known as an "Order of Conditions," within 21 days.

You may appeal an Order of Conditions issued under the Act within 10 days. Abutters, ten residents of the community, and MA DEP can also appeal within the 10-day period. There is a different appeal time and process to appeal an Order of Conditions issued under a city/town wetland bylaw/ordinance. It is best to consult a lawyer immediately if you are considering an appeal of a conservation commission decision.

Rather than a NOI, you may instead file an "Abbreviated Notice of Resource Area Delineation" (ANRAD) if you are just seeking clarification of wetland resource area boundaries. An ANRAD will usually contain a wetlands evaluation of the site by a wetland scientist and a map showing protected wetland resource areas. The commission will hold a publicly advertised meeting to review and discuss the ANRAD and issue a decision on the extent and boundaries of the wetland resource areas.

What are the penalties for violating the law?

Violations are punishable by a maximum fine of \$25,000 and/or not more than two years of imprisonment. In addition, a landowner is usually required to restore illegally altered land to its original condition.

What other laws regulate activities to protect wetlands?

In addition to the Massachusetts Wetlands Protection Act, a majority of the cities and towns in Massachusetts have their own wetlands ordinances/bylaws that provide more protections to wetlands than does the state law. The state and local wetlands laws are administered together by the local conservation commission. Work must meet the stricter of the state and local requirements. Some cities and towns also have wetlands protection requirements in their zoning ordinances/bylaws.

(Of course, state laws are not exempted in wetlands. Some of those laws may help protect wetlands incidentally; others may take into account when the work is in a wetland area. For example, the state

building code applies to structures in wetland areas, and state laws regulating work and structures in filled tidelands, drinking water supply areas, and areas of critical environmental concern apply in both wetland and non-wetland areas.)

The federal Clean Water Act also provides some protections to wetlands.

The federal Clean Water Act Section 404 program, administered by the federal Army Corps of Engineers and the United States Environmental Protection Agency (EPA), requires a permit from the Army Corps of Engineers to discharge dredged or fill materials into certain wetlands. No discharge of dredged or fill material will be permitted if a practicable alternative exists that is less damaging to the aquatic environment or if the nation's waters would be significantly degraded. An applicant must show that steps have been taken to avoid impacts to wetlands, streams, and other aquatic resources; that potential impacts have been minimized; and that compensation will be provided for all remaining unavoidable impacts. <https://www.epa.gov/cwa-404/section-404-permit-program>

The federal Clean Water Act Section 401 program, administered in Massachusetts by MA DEP, requires a water quality certification for a dredging project. The program is intended to protect wetlands from chemical and other types of alterations by assuring that dredging projects in wetlands do not result in a violation of state water quality standards. <http://www.mass.gov/eea/agencies/massdep/water/regulations/314-cmr-9-00-401-water-quality-certifications.html>.

The federal Clean Water Act Section 402 program, administered in Massachusetts by EPA, requires a National Pollutant Discharge Elimination System (NPDES) permit for a discharge of water (including wastewater and storm water) from a "point source" (a discrete conveyance such as a pipe, ditch, or channel) to any surface water body. The permit is intended to ensure that the discharge does not adversely affect water quality or result in a violation of state water quality standards. <https://www3.epa.gov/region1/npdes/index.html>