

MASSACHUSETTS LAWS PERTAINING TO STREAM MAINTENANCE FOR DIADROMOUS FISH RUNS

M.G.L. c. 130, § 19 – Diadromous fish passage, maintenance and operation of fishways

310 CMR: 10.00 Wetlands Protection (Massachusetts Department Environmental Protection)

10.35 – Banks of or land under the ocean, ponds, streams, rivers, lakes, or creeks that underlie an anadromous/catadromous fish run are subject to protection of *Marine Fisheries* (DMF).

When a proposed project involves the dredging, filling, removing or altering of a bank of a fish run, or land under the ocean, or under a pond, stream, river, lake or creek which is a fish run, the issuing authority shall presume that such bank or land is significant to the protection of DMF.

When such land or bank is determined to be significant to the protection of DMF, 310 CMR 10.35(3) through (5) shall apply:

Any project on such land or bank shall not have an adverse effect on the anadromous or catadromous fish run by:

- (a) impeding or obstructing the migration of the fish, unless DMF has determined that such impeding or obstructing is acceptable, pursuant to its authority under M.G.L. c. 130, § 19;
- (b) changing the volume or rate of flow of water within the fish run; or
- (c) impairing the capacity of spawning or nursery habitats necessary to sustain the various life stages of the fish.

M.G.L. c. 130, § 93 (alewife fisheries), 94 (municipal control – harvest, leasing of fisheries)

Stream Clearing Procedures

1. ***Administrative Review*** – Requires approval by local conservation officer
 2. ***Request for Determination of Applicability***
 - a. Approval from Conservation Commission
 - b. More formal, better documented procedure
 - c. Public hearing
 3. ***Notice of Intent (NOI)*** – Project is determined to create impacts to environment, habitat and resources
 - a. Projects and activities included under 310 CMR 10.35

ex.) Dam removals, new fishways, stream bank and/or channel alterations, dredging, etc.
 - b. Permit application and review – (DMF, MADEP, USACOE)
- Routine stream clearing practices is viewed by DMF as practices permissible either under Administrative Review or through Request for Determination (w/approval from Conservation Commission)
 - DMF is active in clearing streams as well as working with Conservation Commissions and providing assistance to local groups
 - Time-of-Year – Be mindful of when you do the work so as not to interfere with diadromous spawning and out-migrations
- a. *Reference:* Evans, et. al. (2011) DMF TR-47 (<http://www.mass.gov/eea/agencies/dfg/dmf/publications/technical.html>)

River Herring Network Meeting – Thurs Oct 30, 2014

Panel Discussion: Stream Clearing to Prepare for River Herring Upstream Migration

Participants:

Heinz Proft, Town of Harwich Herring Warden

Amy Croteau & Martin Wunderly, Town of Barnstable Natural Resources Department

Carl Pawlowski, Fore River Watershed Association (Quincy/Braintree/Weymouth)

Brad Chase, Massachusetts Division of Marine Fisheries

Questions:

- (1) Please describe the work you do in your herring run to prepare for the arrival of the fish.
(For example, How long does it take, how often, what tools do you use?)
- (2) Do you involve the Conservation Commission or any other town committee when deciding what work to do?
- (3) Do volunteers help you with the work? How do you recruit them?
- (4) Is funding required to do the work? If yes – where does it come from?
- (5) What's the biggest challenge to doing this?