

APPENDIX D: APPLICABLE LAWS, POLICIES, AND REGULATIONS

NPS ORGANIC ACT

The 1916 NPS Organic Act (16 USC § 1) commits the NPS to making informed decisions that perpetuate the conservation and protection of park resources unimpaired for the benefit and enjoyment of future generations. In the Organic Act, Congress directed the U.S. Department of the Interior and the NPS to manage units of the national park system “to conserve the scenery and the natural and historic objects and wildlife therein and to provide for the enjoyment of the same in such a manner and by such a means as will leave them unimpaired for the enjoyment of future generations” (16 USC § 1). Congress reiterated this mandate in the Redwood National Park Expansion Act of 1978 by stating that NPS must conduct its actions in a manner that will ensure no “derogation of the values and purposes for which these various areas have been established, except as may have been or shall be directly and specifically provided by Congress” (16 USC § 1a-1).

While some actions and activities cause impacts, the NPS cannot allow an adverse impact that constitutes resource impairment (NPS 2006, sec. 1.4.3). The Organic Act prohibits actions that permanently impair park resources unless a law directly and specifically allows for the action (16 USC § 1a-1). An action constitutes an impairment when its impacts “harm the integrity of park resources or values, including the opportunities that otherwise would be present for the enjoyment of those resources or values” (NPS 2006, sec. 1.4.5). To determine impairment, the NPS must evaluate “the particular resources and values that would be affected; the severity, duration, and timing of the impact; the direct and indirect effects of the impact; and the cumulative effects of the impact in question and other impacts” (NPS 2006, sec. 1.4.5). Therefore, this EIS/EIR analyzes the context, duration, and intensity of impacts related to restoration activities within the Herring River estuary and the Seashore as well as the potential for resource impairment as required by Director’s Order 12 (NPS 2001).

NPS MANAGEMENT POLICIES 2006

The introduction to “Chapter 4, Natural Resources Management” of *NPS Management Policies 2006* states that parks “will strive to understand, maintain, restore, and protect the inherent integrity of the natural resources, processes, systems, and values of the parks” and that the NPS “manages the natural resources of parks to maintain them in an unimpaired condition for present and future generations” (NPS 2006).

The *NPS Management Policies 2006* acknowledge that park units are parts of much larger ecosystems and that parks can contribute to the conservation of regional biodiversity (NPS 2006). Conversely, many parks cannot meet their natural resource preservation goals without the assistance and collaboration of neighboring landowners and resources to achieve ecosystem stability and other resource management objectives. Therefore, section 4.1.4 of the *NPS Management Policies 2006* states that the agency will pursue cooperative conservation with other agencies, Indian tribes, other traditionally associated people, and private landowners in accordance with Executive Order 13352 (Facilitation of Cooperative Conservation).

Section 4.1.5 (Restoration of Natural Systems) of the *NPS Management Policies 2006* states that the NPS will seek to return areas impacted by human disturbances “to the natural conditions and processes characteristic of the ecological zone in which the damaged resources are situated” and that impacts on natural systems resulting from human disturbances include among other things “changes

to hydrologic patterns and sediment transport...and the disruption of natural processes” (NPS 2006).

Other sections of the NPS *Management Policies 2006* most relevant to this restoration plan/EIS/EIR include Section 4.4.1, General Principles for Managing Biological Resources; Section 4.4.2, Management of Native Plants and Animals; Section 4.4.2.2, Restoration of Native plant and Animal Species; Section 4.4.2.3, Management of Threatened and Endangered Plants and Animals; Section 4.4.2.4, Management of Natural Landscapes; Section 4.4.4, Management of Exotic Species; Section 4.6.3, Water Quality; Section 4.6.4, Floodplains; Section 4.6.5, Wetlands; Section 4.6.6, Watershed and Stream Processes; and Section 8.2, Visitor Use.

DIRECTOR’S ORDER 12: CONSERVATION PLANNING, ENVIRONMENTAL IMPACT ANALYSIS, AND DECISION MAKING AND HANDBOOK

NPS Director’s Order 12 and its accompanying handbook (NPS 2001) lay the groundwork for how the NPS complies with NEPA. Director’s Order 12 and the handbook set forth a planning process for incorporating scientific and technical information and establishing a solid administrative record for NPS projects.

NPS Director’s Order 12 requires that impacts to park resources be analyzed in terms of their context, duration, and intensity. It is crucial for the public and decision-makers to understand the implications of those impacts in the short term and long term, cumulatively, and within context, based on an understanding and interpretation by resource professionals and specialists. Director’s Order 12 also requires an analysis of impairment to park resources and values as part of the NEPA document.

DIRECTOR’S ORDER 77: NATURAL RESOURCE PROTECTION

Director’s Order 77 addresses natural resource protection with specific guidance provided in Reference Manual 77: Natural Resource management. This director’s order includes Director’s Order 77-1: Wetland Protection and Director’s Order 77-2: Floodplain Management, both of which were considered during the development of this draft EIS/EIR.

DIRECTOR’S ORDER 28: CULTURAL RESOURCE MANAGEMENT

This director’s order sets forth the guidelines for management of cultural resources, including cultural landscapes, archeological resources, historic and prehistoric structures, museum objects, and ethnographic resources. This order calls for the NPS to protect and manage cultural resources in its custody through effective research, planning, and stewardship in accordance with the policies and principals contained in the NPS *Management Policies 2006*.

OTHER FEDERAL LEGISLATION, EXECUTIVE ORDERS, COMPLIANCE, AND NPS POLICY

National Environmental Policy Act, 1969, as Amended (NEPA)

NEPA is implemented through regulations of the Council on Environmental Quality (40 CFR 1500-1508) (CEQ). The NPS has in turn adopted procedures to comply with the act and the CEQ regulations, as found in Director’s Order 12: Conservation Planning, Environmental Impact Analysis, and Decision Making and its accompanying handbook (NPS 2001). Section 102(2) (c) of this act

requires an EIS for proposed major federal actions that may significantly affect the quality of the human environment.

National Parks Omnibus Management Act of 1998

The National Parks Omnibus Management Act of 1998 (16 USC 5901 et seq.) underscores NEPA in that both are fundamental to NPS park management decisions. Both acts provide direction for articulating and connecting the ultimate resource management decision to the analysis of impacts using appropriate technical and scientific information. Both also recognize that such data may not be readily available and provide options for resource impact analysis in this case.

National Parks Omnibus Management Act of 1998 directs the NPS to obtain scientific and technical information for analysis. The NPS handbook for Director's Order 12 states that if "such information cannot be obtained due to excessive cost or technical impossibility, the proposed alternative for decision will be modified to eliminate the action causing the unknown or uncertain impact or other alternatives will be selected" (NPS 2001).

Redwood National Park Act of 1978, as Amended

Reasserting the system-wide standard of protection Congress established in the original *Organic Act*, the Redwood Amendment states:

The authorization of activities shall be construed and the protection, management, and administration of these areas shall be conducted in light of the high public value and integrity of the National Park System and shall not be exercised in derogation of the values and purposes for which these various areas have been established, except as may have been or shall be directly and specifically provided by Congress (P.L. 95-250, USC Sec 1a-1).

Congress intended the language of the Redwood Amendment to the General Authorities Act to reiterate the provisions of the Organic Act, not to create a substantively different management standard. The House committee report described the Redwood Amendment as a "declaration by Congress" and that the promotion and regulation of the national park system is to be consistent with the Organic Act. The Senate committee report stated that under the Redwood Amendment, "[t]he Secretary has an absolute duty, which is not to be compromised, to fulfill the mandate of the 1916 Act to take whatever actions and seek whatever relief as will safeguard the units of the national park system." Although the Organic Act and the General Authorities Act, as amended by the Redwood Amendment, use different wording ("unimpaired" and "derogation") to describe what the NPS must avoid, both acts define a single standard for the management of the national park system, not two different standards. For simplicity, *NPS Management Policies 2006* uses "impairment," not both statutory phrases, to refer to that single standard.

Endangered Species Act of 1973, as Amended

This act requires all federal agencies to consult with the Secretary of the Interior on all projects and proposals with the potential to impact federally endangered or threatened plants and animals. It also requires federal agencies to use their authorities in furtherance of the purposes of the Endangered Species Act by carrying out programs for the conservation of endangered and threatened species. Federal agencies are also responsible for ensuring that any action authorized, funded, or carried out by the agency is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of designated critical habitat.

Migratory Bird Treaty Act of 1918

The Migratory Bird Treaty Act implements various treaties and conventions between the United States and Canada, Japan, Mexico, and the former Soviet Union for the protection of migratory birds. Under this act, it is prohibited, unless permitted by regulations, to “pursue, hunt, take, capture, kill, attempt to take, capture, or kill, possess, offer for sale, sell, offer to purchase, purchase, deliver for shipment, ship, cause to be shipped, deliver for transportation, transport, cause to be transported, carry, or cause to be carried by any means whatever, receive for shipment, transportation or carriage, or export at any time or in any manner, any migratory bird included in the terms of this Convention. . .for the protection of migratory birds. . .or any part, nest, or egg of any such bird” (16 USC 703). Subject to limitations in the Act, the Secretary of the Interior may adopt regulations determining the extent to which, if at all, hunting, taking, capturing, killing, possessing, selling, purchasing, shipping, transporting, or exporting of any migratory bird, part, nest, or egg will be allowed, having regard for temperature zones, distribution, abundance, economic value, breeding habits, and migratory flight patterns.

Code of Federal Regulations, Title 36 (1992)

Title 36, Chapter 1, provides the regulations “for the proper use, management, government, and protection of persons, property, and natural and cultural resources within areas under the jurisdiction of the National Park Service” (16 USC 3).

National Historic Preservation Act of 1966, as Amended

The National Historic Preservation Act (NHPA), as amended, is the principal legislative authority for managing cultural resources associated with NPS projects. Generally, Section 106 of the NHPA, as amended, and as implemented in 36 CFR 800, requires all federal agencies to consider the effects of their actions on cultural resources listed and/or determined eligible for listing in the National Register. Such resources are also termed “historic properties.”

Moreover, the federal agency must afford the Advisory Council on Historic Preservation (ACHP) the opportunity to comment in the event that an undertaking will have an adverse effect on a cultural resource that is eligible for or listed in the National Register, and must consult with the State Historic Preservation Officer (SHPO) and other interested parties in an effort to avoid, minimize, or mitigate adverse effects.

Eligibility for the National Register is established according to the official Criteria of Evaluation (36 CFR 60.4) issued by the Department of the Interior. The criteria relate to the following:

The quality of significance in American history, architecture, archeology, engineering, and culture present in districts, sites, buildings, structures, and objects that possess integrity of location, design, setting, materials, workmanship, feeling, and association and:

- (a) That are associated with events that have made a significant contribution to the broad patterns of our history; or
- (b) That are associated with the lives of persons significant in our past; or
- (c) That embody the distinctive characteristics of a type, period, or method of construction, or that represent the work of a master, or that possess high artistic

- values, or that represent a significant and distinguishable entity whose components may lack individual distinction; or
- (d) That has yielded, or may be likely to yield, information important in prehistory or history.

A historic property can be considered significant under one or more of the criteria.

Other important laws and regulations designed to protect cultural resources are listed below:

- Native American Graves Protection and Repatriation Act, 1990
- American Indian Religious Freedom Act, 1978
- National Environmental Policy Act, 1969
- Archeological Resources Protection Act, 1979
- Protection of Historic Properties (36 CFR 800), as amended 2004
- Executive Order 11593: Protection and Enhancement of the Cultural Environment, 1971
- Executive Order 13007: Indian Sacred Sites, 1996

Historic Sites Act of 1935

This act declares as national policy the preservation for public use of historic sites, buildings, objects, and properties of national significance. It authorizes the Secretary of the Interior and the NPS to restore, reconstruct, rehabilitate, preserve, and maintain historic or prehistoric sites, buildings, objects, and properties of national historical or archaeological significance.

Marine Mammal Protection Act, 1972

The Marine Mammal Protection Act prohibits, with certain exceptions, the taking of marine mammals in United States waters and by United States citizens on the high seas and the importation of marine mammals and marine mammal products into the United States. The act defines “take” as “to harass, capture, kill, or attempt to harass, hunt, capture, or kill any marine mammal.” It defines harassment as “any act or pursuits, torment or annoyance which has the potential to injure a marine mammal or marine mammal stock in the wild; or has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering.” This act recognizes that some marine mammal species or stocks may be in danger of extinction or depletion as a result of human activities and that these species or stocks must not be permitted to be depleted. The act, as amended in 1994, provides for certain exceptions to the take prohibitions, such as for Alaska Native subsistence and permits and authorizations for scientific research; a program to authorize and control the taking of marine mammals incidental to commercial fishing operations; preparation of stock assessments for all marine mammal stocks in waters under United States jurisdiction; and studies of pinniped (fin-footed mammals)-fishery interactions.

Magnuson-Stevens Fishery Management and Conservation Act of 1976

The Magnuson-Stevens Fishery Management and Conservation Act was established to promote conservation of marine fishery (shellfish and finfish) resources and included the establishment of eight regional fishery management councils that develop fishery management plans to properly

manage fishery resources within their jurisdictional waters. The 1986 and 1996 amendments to the Act recognized that many fisheries depend on nearshore and estuarine habitats for at least part of their lifecycles and included evaluation of habitat loss and protection of critical habitat. The marine environments important to marine fisheries, referred to as essential fish habitats (EFH), are defined to include “those waters and substrates necessary to fish for spawning, breeding, feeding, or growth to maturity.” The Act further mandates that National Marine Fisheries Service (NMFS) coordinate with other federal agencies to avoid, minimize, or otherwise offset adverse effects on EFH that could result from proposed activities. To delineate EFH, regional fishery management councils mapped coastal waters and superimposed ten minute by ten minute (10' × 10') square coordinate grids. The Cape Cod Bay grid contains Wellfleet Harbor and the Herring River within.

Coastal Zone Management Act 1972, as Amended

The Coastal Zone Management Act (CZMA) (16 USC 1451 et seq.) seeks to preserve and protect coastal resources. Through the CZMA, states are encouraged to develop coastal zone management programs (CZMPs) to allow economic growth that is compatible with the protection of natural resources, the reduction of coastal hazards, the improvement of water quality, and sensible coastal development. The CZMA provides financial and technical incentives for coastal states to manage their coastal zones in a manner consistent with CZMA standards and goals. CZMA Section 307 requires that federal agency activities that affect any land or water use or natural resource of the coastal zone must be consistent to the maximum extent practicable with the enforceable policies of the state CZMP. Federal agencies and applicants for federal approvals must consult with state CZMPs and must provide the CZMP with a determination or certification that the activity is consistent with the CZMP's enforceable policies, where those policies will have a possible effect on state coastal resources, as the CZMP and local land use plans define them.

Clean Water Act of 1972, as Amended

The Clean Water Act (CWA) is a comprehensive statute aimed at restoring and maintaining the chemical, physical, and biological integrity of the nation's waters. The U.S. Army Corps of Engineers (USACE) administers section 404 of this Act and regulates discharge of dredged and fill material to waters of the United States, including wetlands under federal jurisdiction. The CWA also requires the establishment of state water quality standards for surface waters, as well as federal water quality standards, and the development of guidelines to identify and evaluate the extent of nonpoint source pollution. Section 401 of the Act – Water Quality Certification – gives states the authority to review projects that must obtain federal licenses or permits and that result in a discharge to state waters. The purpose of the Water Quality Certification is to ensure that a project will comply with state water quality standards and other appropriate requirements of state law, and it is required for any project that also requires a USACE Section 404 wetland permit.

Section 10 of the Rivers and Harbors Act of 1899

The USACE New England District administers Section 10, which is required for all work including work seaward of the mean high water line in navigable waters of the United States. Given the nature and extent of the restoration project, it is most likely that the general permit, a consolidation of all USACE permits, would not suffice, and applications for individual permits would be necessary. Under this latter review process, applications are submitted to the USACE, which in turn issues a Public Notice and initiates a comment period. The USACE evaluates comments, public interest criteria, and compliance with the federal CWA, and issues a permit, as deemed appropriate.

Executive Order 11990: Protection of Wetlands

This executive order directs federal agencies to avoid, to the extent possible, the long-term and short-term adverse impacts associated with the destruction or modification of wetlands, and to avoid direct or indirect support of new construction in wetlands wherever there is a practicable alternative.

Executive Order 11988: Floodplain Management

This executive order directs federal agencies to avoid, to the extent possible, the long-term and short-term adverse impacts associated with the occupancy and modification of flood plains and to avoid direct or indirect support of flood plain development wherever there is a practicable alternative.

Executive Order 13112: Invasive Species

This executive order defines an invasive species as “an alien species whose introduction does or is likely to cause economic or environmental harm or harm to human health.” and is intended to prevent the introduction of invasive species and provide for their control and to minimize the economic, ecological, and human health impacts that invasive species cause. By this executive order, federal agencies are directed to expand and coordinate their efforts to combat the introduction and spread of plants and animals not native to the United States.

Executive Order 11593: Protection and Enhancement of the Cultural Environment

This executive order directs federal agencies to support the preservation of cultural properties and to identify and nominate to the NRHP cultural properties in the park and to “exercise caution... to assure that any NPS-owned property that might qualify for nomination is not inadvertently transferred, sold, demolished, or substantially altered.”

Executive Order 13186: Responsibilities of Federal Agencies to Protect Migratory Birds

Migratory birds are of great ecological and economic value to this country and to other countries. They contribute to biological diversity and bring tremendous enjoyment to millions of people who study, watch, feed, or hunt these birds throughout the United States and other countries. The United States has recognized the critical importance of this shared resource by ratifying international, bilateral conventions for the conservation of migratory birds. Such conventions include the Convention for the Protection of Migratory Birds with Great Britain on behalf of Canada 1916, the Convention for the Protection of Migratory Birds and Game Mammals-Mexico 1936, the Convention for the Protection of Birds and Their Environment-Japan 1972, and the Convention for the Conservation of Migratory Birds and Their Environment-Union of Soviet Socialist Republics 1978. These migratory bird conventions impose substantive obligations on the United States for the conservation of migratory birds and their habitats, and through the Migratory Bird Treaty Act, the United States has implemented these migratory bird conventions with respect to the United States. This executive order directs executive departments and agencies to take certain actions to further implement the Migratory Bird Treaty Act.

STATE AND LOCAL LAWS, POLICIES, REGULATIONS, AND PLANS

Massachusetts Environmental Policy Act

The Massachusetts Environmental Policy Act (MEPA) is the state equivalent of NEPA. MEPA provides meaningful opportunities for public review of the potential environmental impacts of projects for which state agency action is required and assists each agency in using—in addition to applying any other applicable statutory and regulatory standards and requirements—all feasible means to avoid damage to the environment or, to the extent damage to the environment cannot be avoided, to minimize and mitigate damage to the environment to the maximum extent practicable.

MEPA considers projects that may meet or exceed review thresholds for various resource categories found in 301 CMR 11.00. For this project, those categories include land, rare species, wetlands, waterways, and tidelands, water supply, transportation, and historic and archaeological resources.

The project area is located in the Wellfleet Harbor Area of Critical Environmental Concern (ACEC). While restoration of the Herring River would help to achieve the goal of preserving, restoring, and enhancing the resources in the ACEC (301 CMR 12.12), it will have to be carried out in a manner that minimizes adverse effects on marine and aquatic productivity, surface and groundwater quality, habitat values, storm damage prevention or flood control, historic and archaeological resources, scenic and recreational resources, and other natural resource values of the area.

Because the restoration plan also includes state funding and other state permits, it is subject to MEPA.

Massachusetts Waterways Licensing Program (M.G.L. c.91)

The Massachusetts Waterways Licensing Program (Chapter 91) is the Commonwealth's primary tool for protection and promotion of public use of its tidelands and other waterways. The Commonwealth formally established the program in 1866, but the philosophy behind Chapter 91 dates back to the earliest days of the Massachusetts Bay Colony, most notably in the Colonial Ordinances of 1641–1647. The Colonial Ordinances codified the “public trust doctrine,” a legal principle that dates back nearly 2000 years which holds that the air, the sea, and the shore belong not to any one person, but rather to the public at large. The oldest program of its kind in the nation, Chapter 91 regulates activities on both coastal and inland waterways, including construction, dredging, and filling in tidelands, great ponds, and certain rivers and streams. The restoration plan would undergo a Chapter 91 review due to new structures (culverts) over tidelands and modifications to previously licensed or unlicensed structures.

Massachusetts Endangered Species Act (M.G.L. c. 131A)

The Massachusetts Endangered Species Act (M.G.L. c.131A and regulations 321 CMR 10.00) (MESA) protect rare species and their habitats by prohibiting the “taking” of any plant or animal species listed as endangered, threatened, or species of concern by the Massachusetts Division of Fisheries and Wildlife. Taking includes the harassing, killing, trapping, collecting of species as well as the disruption of nesting, breeding, feeding, or migratory activity, including habitat modification or destruction. Three types of filings under MESA are coordinated through the Natural Heritage and Endangered Species Program at the Division of Fisheries and Wildlife: (1) MESA Information Request for rare species information; (2) MESA Project Review; and (3) the Conservation and Management Permit Application. Projects resulting in a “take” of state-listed rare species may be

eligible for a Conservation and Management Permit (321 CMR 10.23). A Rare Species Habitat assessment or survey may be required as part of the Conservation and Management Permit process.

Cape Cod Commission – Development of Regional Impact

An Act of the Massachusetts General Court in 1990 created the Cape Cod Commission (CCC). The Commission reviews projects that present regional issues identified in the Act, including water quality, traffic flow, historic values, affordable housing, open space, natural resources, and economic development.

The law requires a Development of Regional Impact (DRI) review if a project exceeds a specific threshold. Examples of projects that need to go through mandatory DRI review by the CCC are those involving:

- subdivisions of 30 acres or more
- development of 30 or more residential lots or dwelling units
- development of 10 or more business, office, or industrial lots
- commercial development or change of use for buildings greater than 10,000 square feet
- transportation facilities for passage to or from Barnstable County
- demolition or major changes to some national- or state-recognized historic structures
- bridge, ramp, or road construction providing access to several types of water bodies and wetlands
- new construction or change of use involving outdoor commercial space greater than 40,000 square feet
- construction of any wireless communication tower exceeding 35 feet in height
- site alterations or site disturbance greater than 2 acres without a valid local permit
- mixed use residential and non-residential developments with a floor area greater than 20,000 square feet

Projects that do not meet a threshold but are forwarded to the CCC from the town in which they are located also require a DRI review. The Commission must first vote to accept this type of referral as a development that has regional impacts. The Herring River Restoration Project would meet the threshold for a DRI review because an EIR is required by MEPA.

Massachusetts Historical Commission

The Massachusetts Historical Commission (MHC) must review any projects that require funding, licenses, or permits from any state agency in compliance with Massachusetts General Laws (MGL) Chapter 9, sections 26–27C. This law creates the MHC, the office of the State Archaeologist, and the State Register of Historic Places among other historic preservation programs. It provides for MHC review of state projects, State Archaeologist's Permits, the protection of archaeological sites on public land from unauthorized digging, and the protection of unmarked burials. These regulations set up a process that mirrors the federal Section 106 regulations, which include identification of historic properties; assessment of effect; and consultation among interested parties to avoid, minimize, or mitigate any adverse effects.

Massachusetts Wetland Protection Act and Rivers Protection Act

The Wetlands Protection Act (MGL Chapter 131, Section 40) protects wetlands and the public interests they serve, including flood control, prevention of pollution and storm damage, and protection of public and private water supplies, groundwater supply, fisheries, land containing shellfish, and wildlife habitat. These public interests are protected by requiring a careful review of proposed work that may alter wetlands. The law protects not only wetlands, but other resource areas, such as land subject to flooding (100-year flood plains), the riverfront area (added by the Rivers Protection Act), and land under water bodies, waterways, salt ponds, fish runs, and the ocean.

These regulations set forth a public review and decision-making process by which activities affecting areas subject to protection under the law are to be regulated in order to contribute to the following public interests and values:

- protection of public and private water supply
- protection of ground water quality and supply
- flood control
- erosion and sedimentation control
- storm damage prevention
- prevention of pollution
- protection of land containing shellfish
- protection of fisheries
- protection of wildlife habitat

Wellfleet Environmental Protection Bylaw

At the local level, the community's conservation commission administers the Wetlands Protection Act. The Wellfleet Conservation Commission promulgated the Wellfleet Environmental Protection Regulations pursuant to the authority granted under the Wellfleet Environmental Protection Bylaw as approved on April 28, 1986 at a town meeting. In addition to the regulations required by the Wetlands Protection Act, these regulations set forth a public review and decision-making process by which activities affecting areas subject to protection under the bylaw are to be regulated in order to contribute to public interests and values.

The bylaw and regulations subject the following Wetland Resource Areas to protection under:

- any freshwater wetland, inland bank, coastal wetland, coastal bank, beach, dune, flat, marsh, wet meadow, bog, or swamp
- any estuary, creek, river, stream, pond, lake, and lands under these bodies of water; land under the ocean
- land subject to tidal action, land subject to coastal storm flowage, bordering land subject to flooding, and isolated land subject to flooding
- all land within 100 feet (200 feet for rivers, streams, and fresh creeks) of any freshwater wetland, inland bank, coastal wetland, coastal bank, beach, dune, flat, marsh, wet meadow,

bog, swamp, estuary, creek, river, stream, pond, lake, lands under these bodies of water, and land under the ocean

Massachusetts Water Quality Certification

The MassDEP's Division of Wetlands and Waterways is responsible for ensuring clean air and water within the Commonwealth of Massachusetts. MassDEP administers regulations relating to the discharge of dredged or fill material, dredging, and dredged material disposal activities in waters of the United States within the state that require federal licenses or permits and that are subject to state water quality certification under 33 USC 1251, et seq. For work in USACE jurisdiction involving a discharge to waters of the United States, MassDEP must provide or waive certification before work can proceed. This permit represents the state's assurance that land disturbing activities will not adversely affect water quality. The Section 401 review ensures that a proposed dredge and/or fill project that can result in the discharge of pollutants complies with Massachusetts Surface Water Quality Standards, the Massachusetts Wetlands Protection Act, and otherwise avoids or minimizes individual and cumulative impacts to Massachusetts waters and wetlands.

Coastal Zone Management Act Consistency Review

Massachusetts CZMP administers the Federal Consistency Review under the federal CZM Act of 1972, which ensures that any federal activities in or affecting Massachusetts coastal resources are consistent with state coastal policies. CZM's mission is to balance the impacts of human activity with the protection of coastal and marine resources. Massachusetts CZM was specifically established to work with other state agencies, federal agencies, local governments, and the general public to promote sound management of the Massachusetts coast. The Massachusetts CZM is not a permitting agency; however, it does have the authority to review federal activities in the Massachusetts coastal zone to ensure that they are consistent with CZM program policies. Because this restoration project is a federal undertaking, CZM must approve the action before the action can take place.