

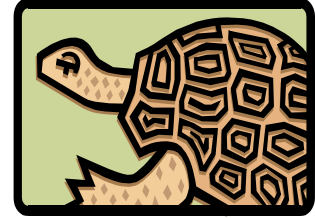


Cape Cod Cranberry Growers' Association

GROWER ADVISORY

Massachusetts Endangered Species Act

The Massachusetts Endangered Species Act and its implementing regulations were established in 1990 and 1992 respectively to provide a comprehensive approach for the protection of the Commonwealth's endangered, threatened or special concern species and their habitats. A similar act exists at the federal level though individual states, Massachusetts among them, have created lists of species that are thought to be threatened at the state or local level though they have not yet declined to levels low enough to be endangered at the state or federal level. In Massachusetts there are special penalties for taking or harming listed species, the state has a land acquisition or conservation easement program for listed species, and there is regulatory authority over activities that adversely affect rare species habitats on both private and public lands. Currently there are approximately 435 species of vertebrates, invertebrates, and plants protected by this list. The list of these species is updated every two years in a process that begins with a review by a group of volunteers working with Mass Wildlife's Natural Heritage and Endangered Species Program and ends with a public hearing and a vote by the regulatory body of the Fisheries and Wildlife Board. Any species voted onto this list is protected from being harassed, injured or killed in addition to protection of habitat that is essential to perpetuate the species.



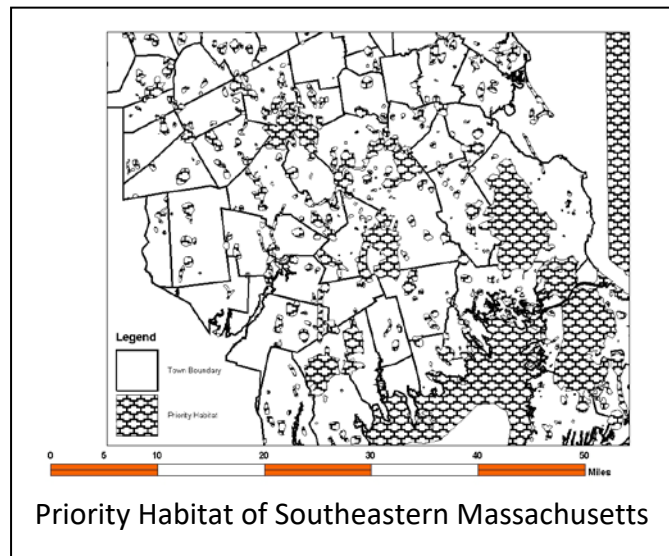
Massachusetts Natural Heritage Designated Priority Habitat

The Massachusetts Natural Heritage Atlas records for the public "Priority Habitat" polygons that broadly delineate local populations of listed rare species. There are significant amounts of cranberry lands in these priority habitats. The CCCGA has these records in our GIS database and are available for review with an appointment. This advisory will focus on the regulations affecting work in these areas.

Delineation of Priority Habitat and Review of Activities or Projects Within Priority Habitat

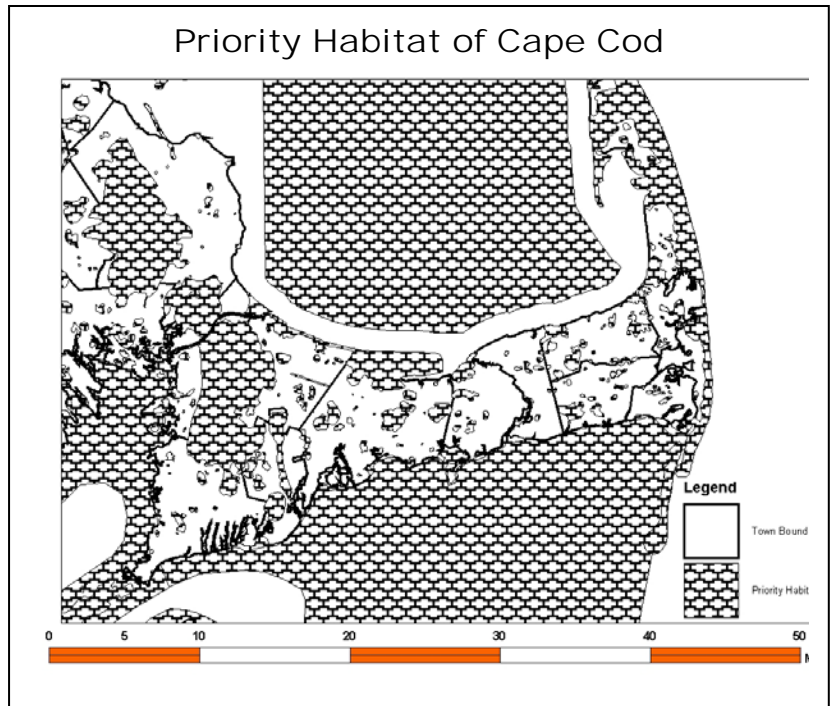
Any species that is native to the Commonwealth of Massachusetts is eligible for listing as a rare species and its habitat protected by the NHESP. Any species that is protected under the Federal Endangered Species Act will be listed in an equivalent or more protected category in the state list. The criteria for determining Endangered, Threatened, or Special Concern status include:

- Species Classification
- Reproductive and population status and trends
- Whether the species is native or has been introduced
- Vulnerability, as determined by threats to the species or its habitat
- Specialization, as determined by unique habitat requirements
- Restricted distribution, as determined by limited or disjunct geographic range
- And, rarity, as determined by a limited number of occurrences or by occurrence in limited numbers.



As mentioned above, NHESP lists protected species as Endangered, Threatened, or as a “Species of Special Concern”. For the purpose of cranberry activities, the Massachusetts Endangered Species Act treats these species and their respective habitats the same except that as species become more endangered NHESP may potentially delineate larger tracts of “Priority Habitat” as support lands for these species. These list categories are:

- (A) **Endangered** Any species of plant or animal on danger of extinction throughout all or significant portion of its range and species of plants or animals in danger of extirpation as documented by biological research and inventory.
- (B) **Threatened** Any species of plant or animal likely to become an Endangered species within the foreseeable future throughout all or a significant portion of its range and any species declining or rare as determined by biological research and inventory and likely to become endangered in the foreseeable future.
- (C) **Species of Special Concern** Any species of plant or animal which has been documented by biological research and inventory to have suffered a decline that could threaten the species if allowed to continue unchecked or that occurs in such small numbers or with such a restricted distribution or specialized habitat requirements that it could easily become threatened within Massachusetts.



Proposals for Listing or Delisting Species

Any person may propose the addition or deletion of species from the list, or for changes in classification of listed species. The burden of proof for delisting species will be on the person requesting this change in status. These proposals must be submitted to the director of the Natural Heritage and Endangered Species Program and should contain the following information:

- 1 The date submitted; the proponents name, signature, address, and telephone number; and the association, institution, or business, if any, represented by the proponent.
- 2 The common and scientific name of the species
- 3 The listing category being proposed
- 4 A detailed justification of the proposed listing or delisting action, including the past and present population status and distribution in Massachusetts, and any known suspected threats
- 5 Information on the known status of the species throughout its range
- 6 Supporting documentation (literature citations, copies of reports, letters from scientific authorities, maps, species records etc.) and
- 7 Other information requested by the director.

Within 21 days of receipt the director of the NHESP will determine whether significant evidence has been submitted to warrant a review of the species status. If so, the Natural Heritage and Endangered Species Advisory Committee will advise the director on the appropriate action. Any recommended changes will then be referred to the Fisheries and Wildlife Board. Any changes proposed by Mass. Fisheries are subject to public hearing.

Delineation of Priority Habitat Priority Habitat is used by the NHESP as a tool for screening projects and activities that in the opinion of NHESP could negatively affect a listed species. These habitats are delineated to protect listed species and to protect land deemed important for perpetuation of the species. Delineation of Priority Habitat reoccurs every two years by the Division of Fisheries and Wildlife (DFW). When these maps are compiled they are provided to the town planning boards, conservation commissions, boards of selectmen, and any other regional permit granting commissions in those towns where Priority Habitat exists. CCCGA also has the maps.

Appeal of Delineation

Any property owner whose land has been incorporated into a delineated Priority Habitat may request reconsideration by the DFW for his/her land. If, during this process, the DFW provides the property owner with files related to delineation of species, he/she may be forced to sign a confidentiality agreement, as these are not public records.

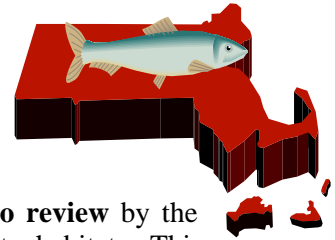
An appeal must include the following information:

- Name
- Address
- Ownership interest in the property
- Acreage of the property
- A copy of a USGS topographic map, scale 1:24,000 or 1:25,000 with the property location clearly marked and centered
- A clear statement explaining the reasons for the reconsideration request with specific reference to scientific studies, records, surveys, or other information relevant to the request.

Where Can I Find Current Listed Species?

The Current list of protected species can be found at:

<http://www.mass.gov/eea/agencies/dfg/dfw/natural-heritage/species-information-and-conservation/mesa-list/list-of-rare-species-in-massachusetts.html>



Review of Activities or Projects Within Priority Habitat

Normal Maintenance and Improvement of Land in Agricultural Use

The normal maintenance and improvement of land in agricultural use **is not subject to review** by the Division of Fisheries and Wildlife as being a “Take” of state-listed species in priority habitat. This exemption will continue only as long as the land remains in agricultural use. The normal maintenance and improvement of land in agricultural use does not include site preparation for purposes of conversion to any non-agricultural use. To maintain this exemption, land must remain in active agricultural use.

Construction of New Bog in “Priority Habitat” and the MEPA review

The Massachusetts Environmental Policy Act - MEPA - requires that state agencies study the environmental consequences of their actions, including permitting and financial assistance of any proposed construction project. It also requires them to take all feasible measures to avoid, minimize, and mitigate damage to the environment. MEPA 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 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 for a proposed project. It does not pass judgment 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 permitting agencies act, to ensure that they know the environmental consequences of a proposal.

If a proposed project is **over two acres** in size and occurs within “Priority Habitat” The Massachusetts Environmental Policy Act requires that the new bog construction and any of its associated activities be subject to the Environmental Notification Form Process. Environmental Notification Forms can be accessed here:

<http://www.mass.gov/eea/agencies/mepa/filing-with-mepa/mepa-forms-1c.html>

There is no cost associated with filing an Environmental Notification Form.

Once the ENF is submitted, any agency or person may comment on the project, its alternatives, its potential environmental impacts and proposed mitigation measures during a 20-day comment period. Projects currently under MEPA review are easily accessible to the public at the MEPA website. MEPA then has 10 days for review of the project and will make an “adequate” or “inadequate” determination. This determination cannot permit or disallow a project, rather, it is meant to serve as a guide to the proper permitting boards i.e. conservation commission, zoning board, etc.



NHESP Review

During the comment period the Natural Heritage and Endangered Species Program will also review the proposal and they will send their comments to the proponent, MEPA, Conservation Commission, and any other concerned local boards. They will work with the proponent, i.e. the grower, to develop a plan that in their eyes will minimize any threat to a listed species. If a specific project is scoped for a MEPA review and Massachusetts Natural Heritage & Endangered Species Program has records of rare species within or near the project site, the project proponent is required to work with NHESP to demonstrate that the project will not have a short or long term impact on any rare species in accordance with the Massachusetts Endangered Species Act. If NHESP determines that the proposed project is likely to adversely affect rare species habitat,

they require a Conservation and Management Permit to demonstrate sufficient avoidance of impact and mitigation measures will provide a net benefit to the target species.

Enforcement of Violations and Fines

Enforcement

Lack of enforcement of these regulations in the past can likely be attributed to a small staff at NHESP. As cranberry lands become increasingly prone to development pressure it is likely that NHESP will give increase focus to activities in this part of the state. In addition, “Priority Habitat” areas have increased in sized in Southeastern Massachusetts in recent years.

Unauthorized Alteration of Significant Habitat

Any person altering more than two acres of “Priority Habitat” without authorization can be punished of a fine between \$1,000 and \$10,000 for their first offense. A subsequent offense can result in fines between \$10,000 and \$20,000. In addition or as an alternative to these fines, any person may be ordered to restore the “Priority Habitat” to its prior condition.

Unauthorized Taking, Possession, and Sale of Species on the State or Federal Lists

Any person who takes, possesses, and/or sells species on the state and federal protected species list may be punished by a fine of \$500.00 and 90 days imprisonment. Second and subsequent offenses are punished more severely. It is important to note that NHESP views the taking of each individual species as a separate incident even if associated with the same construction.

With “Take” being defined by 321 CMR 10:00 “in reference to animals, means harass, harm, pursue, hunt, shoot, hound, kill, trap, capture, collect, process, disrupt the nesting, breeding, feeding or migratory activity or attempt to engage in any such conduct, or to assist such conduct, and in reference to plants, means to collect, pick, kill, transplant, cut or process or attempt to engage or to assist in any such conduct. Disruption of nesting, breeding, feeding or migratory activity may result from, but is not limited to, the modification, degradation, or destruction of habitat.”

The information in this guide is provided by the Cape Cod Cranberry Growers’ Association as a service to its members. The information represents our interpretation of the state requirements and by no means is intended to act as a substitute for reading and following the specific regulatory requirements.

The Massachusetts Endangered Species Act and
The Massachusetts Environmental Policy Act can be viewed at:

321 CMR 10:00 and 301 CMR 11:00 respectively

For more information, please contact

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