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## **DEP AMENDS WETLAND PROTECTION ACT TO ADDRESS PERENNIAL & INTERMITTENT RIVERS, & DROUGHT**

by Patrick Garner

On December 20, 2002, DEP released the latest amendment to the Wetlands Protection Act. The amendment is considered an *interim* measure to be used until statewide perennial river maps are available. The amendment changes addressed definitions of perennial and intermittent rivers, and drought. Copies were mailed to all Conservation Commissions, and posted on DEP's web site; a downloadable PDF version is available at [www.state.ma.us/dep/brp/ww/regs.htm](http://www.state.ma.us/dep/brp/ww/regs.htm).

The amendments follow more than two years of work by a DEP technical advisory committee. MACC had two members on the committee, including me and Heidi Roddis Ricci. There was a public comment period, and public hearings were held around the state before the final regulations were issued.

Determining whether a river is perennial or not is important because a protected Riverfront Area of up to 200 feet in width -- considered a resource area itself -- exists only beside *perennial* rivers. Although an *intermittent* river is considered a resource area under the Wetland Protection Act, it is bordered by a 100 foot Buffer Zone only, and is a far less protected area.

The change in perennial definitions is significant. The presumption that a perennial river shown on USGS mapping is perennial has been retained, but criteria for disproving that presumption have changed completely. More small rivers and streams are protected, and many previously confusing definitions found in the original Rivers Protection Act have been dropped entirely. For instance, "indicators" such as macroinvertebrates and stream order are no longer found in the regulations. The minimum watershed area for a perennial river has been lowered from three square miles to one square mile.

A procedure for determining that intermittent rivers, as shown on USGS maps, are in fact perennial has been added to the regulations. A new USGS program called **StreamStats** is available on the web; the program calculates watershed area, type of watershed geology and projected stream flows. The program takes effort to learn, but when when a positive flow is determined, streams with watersheds as small as 0.50 square miles, or with more than 75% stratified drift (sands and gravel), may be determined perennial, even when shown as intermittent on USGS mapping. The program is available on the web at <http://ma.water.usgs.gov/streamstats>.

Definitions for impoundments, withdrawal and diversions within rivers have also been changed for clarification. For instance, the new definitions recognize that flash boards

cannot be raised to interrupt a normally perennial river to satisfy a claim that a stream is intermittent. The new emphasis in these revised definitions is on man-made changes.

The definition of “extended drought” has also been amended to coincide with an “Advisory” to be issued under appropriate conditions by a new Massachusetts Drought Management Task Force. Gone are the labored requirements to compare precipitation, often from locations many towns away. The permanent Task Force will now issue advisories based on multiple indicators, including stream flow, precipitation, ground water levels, snow pack and reservoir levels. These advisories alone will determine when an area is in drought. According to DEP, “Monthly maps will be prepared by DEM detailing the geographic extent of the drought and the corresponding drought level. Drought information is published on the web at [www.state.ma.us/dem/programs/rainfall/index.htm](http://www.state.ma.us/dem/programs/rainfall/index.htm).”

As I mentioned initially, these amendments to the regulations are considered interim. The technical advisory committee unanimously moved that statewide perennial river atlases should be developed by DEP as soon as possible. Although DEP has not announced a timetable for publishing perennial river atlases, expectations are that this phase could take three years or more to accomplish.

Regulators and consultants are advised to become familiar with these amendments. Many of the changes are specifically intended by DEP to eliminate controversies that arose after promulgation of the original Rivers Protection Act.