



*This document presents an interpretation of what are quite complex Massachusetts wetland regulations. This does not necessarily reflect the policy opinions of the Massachusetts Department of Environmental Protection or the Division of Fisheries & Wildlife.*

## FREQUENTLY ASKED QUESTIONS about MASSACHUSETTS VERNAL POOL CERTIFICATION

1. *Can vernal pools be protected if they aren't certified?*

YES. Certification simply establishes a presumption of significance to wildlife habitat for a wetland. The state Wetlands Protection Act Regulations give the Conservation Commission discretionary authority to protect wetland resources (310 CMR 10.53). In the absence of a certification, if information is presented to the Commission which clearly shows that a resource area is functioning as a vernal pool (i.e. meets the NHESP "Guidelines for Certification of Vernal Pool Habitat"), the Commission may condition a project to protect the wildlife habitat value of the vernal pool.

2. *May the Commission apply WPA performance standards to pools certified after a Notice of Intent has been filed?*

YES. The Conservation Commission has the discretionary authority to accept any information during the public hearing process for a Notice of Intent that will help them protect the interests of the Wetlands Protection Act. The discretionary authority granted to Conservation Commissions and to the Department of Environmental Protection allows the incorporation of protective conditions into the Order of Conditions that prevent adverse effects to the wildlife habitat value of vernal pools. The opportunity to protect a vernal pool expires only after final permit appeal periods have lapsed.

3. *How much of the area surrounding a Certified Vernal Pool is protected under the Wetlands Protection Act Regulations?*

This is tricky. Certified Vernal Pools (or even uncertified) and an additional associated "vernal pool habitat" zone is protected under the Wetlands Protection Act Regulations. Vernal pool habitat includes the pool of water itself, plus that area extending *up to* 100 feet from the boundary of the pool. Protected vernal pool habitat does not include any adjacent non-jurisdictional upland (pools in Riverfront Area are different). The vernal pool and associated vernal pool habitat must occur within a jurisdictional wetland resource area. Under the Wetlands Protection Act Regulations, there is no protection afforded to any portion of vernal pool habitat that extends beyond the delineated boundary of a jurisdictional resource area. In the Riverfront Area, surrounding upland habitat, which provide essential non-breeding habitat for vernal pool amphibians, can be protected. Measures can and should be taken to protect upland surrounding vernal pools beyond 100 feet from the boundary of the vernal pool.

4. *Are Certified Vernal Pools protected by laws other than the Wetlands Protection Act Regulations?*

Certified vernal pools are protected under the Massachusetts Surface Water Quality Standards (314 CMR 4.00), the subsurface sewage disposal law, Title 5 (310 CMR 15.00), and the Forest Cutting Practices Act regulations (304 CMR 11.00). The Forest Cutting Practices Act regulations also protect vernal pools that are not certified by providing Best Management Practices that are designed to minimize impacts on vernal pools that are identified during the review of forest cutting plans.

5. *Who should we call if a project is going to result in alteration of or discharge into a Certified Vernal Pool?*

The Natural Heritage Program has no statutory authority to protect vernal pools. The first call should be to the local Conservation Commission, then the appropriate regional office of the Department of Environmental Protection. The wetlands sections of the Environmental Protection Agency in Boston and the US Army Corps of Engineers in Concord can also be contacted.

6. *Doesn't the presence of an inlet or outlet disqualify vernal pools from certification?*

NO. Vernal pool habitat is defined in both the Regulations and the "Guidelines for the Certification of Vernal Pool Habitat," and neither definition contains restrictions based on the presence or absence of inlets or outlets. Inlets and outlets are important in determining whether or not a wetland may be classified as an Isolated Land Subject to Flooding, a jurisdictional wetland resource area that cannot have an inlet or outlet.

7. *How is the boundary of a Certified Vernal Pool determined?*

The Wetlands Protection Act Regulations state that "the boundary of vernal pool habitat is that which is certified by the Division of Fisheries & Wildlife (DFW)..." **The NHESP does not establish an on-the-ground boundary for vernal pools through the certification process.** Boundary delineation requires field observation. The boundary of vernal pool habitat must incorporate the shallowest reaches of the pool. Where there is no distinct and clear topographic break at the edge of a pool, the maximum observed or recorded water level represents the ecological boundary of the vernal pool. If a determination must be made outside of the spring (maximum flooding) season, leaf staining and other indicators of hydrology should be used.

The regulations allow an opinion from a registered professional engineer regarding the boundary of a vernal pool. **WATCH OUT** -- it is important that ground water inputs be included in any such calculation, and DEP has issued a policy requiring this (ILSF definition Policy, DWW Policy 85-2). Otherwise, the boundary can be very wrong.

8. *Does the Natural Heritage & Endangered Species Program (NHESP) require proof of landowner permission before certifying a vernal pool occurring on private property?*

NO. The NHESP **strongly recommends** obtaining permission to enter on private property when collecting information for vernal pool certification. Although, it is often difficult to tell whose property one is on. The NHESP cannot determine whether or not a pool that has been submitted for certification occurs on lands posted against trespass.

9. *Does the NHESP visit every vernal pool prior to issuing certifications?*

NO. Certification is based on the physical and biological documentation (i.e. photographs) submitted by volunteers for each vernal pool.

10. *How can a vernal pool be decertified?*

Once a vernal pool has been documented to provide breeding habitat for obligate vernal pool species it is very difficult to reverse the presumption that it functions as vernal pool habitat. However, evidence presented by a competent source that clearly proves that the area does not meet the physical and biological criteria established for vernal pool certification may be presented in an appeal.