



MASSWILDLIFE

DIVISION OF FISHERIES & WILDLIFE

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March 28, 2022

Town of Wellfleet Conservation Commission
300 Main Street
Wellfleet, MA 02667

Town of Truro Conservation Commission
24 Town Hall Road
Truro, MA 02666

Town of Wellfleet
300 Main Street
Wellfleet, MA 02667

U.S. National Park Service
Cape Cod National Seashore
99 Marconi Site Road,
Wellfleet, MA 02667

RE: Applicant: Town of Wellfleet & U.S. National Park Service (Cape Cod National Seashore)
Project Location: Herring River Estuary, Towns of Wellfleet and Truro
Project Description: Herring River Restoration Project (Phase 1)
DEP Wetlands File No.: Not Available
NHESP Tracking No.: 04-15126

Dear Commissioners & Applicant:

The Applicant listed above has submitted a Notice of Intent and Habitat Management Plan (“Habitat Restoration and Monitoring Plan”, Version 1.5, dated February 2022) to the Natural Heritage & Endangered Species Program of the Massachusetts Division of Fisheries & Wildlife (the “Division”), in compliance with the rare wildlife species section of the Massachusetts Wetlands Protection Act Regulations (WPA; 310 CMR 10.37, 10.59). The Division also received the MESA Review Checklist and supporting documentation for review pursuant to the MA Endangered Species Act Regulations (MESA; 321 CMR 10.18).

According to the Massachusetts Natural Heritage Atlas (15th Edition), the Herring River Restoration Project is located within the *Priority* and *Estimated Habitat* of state-listed species. State-listed species and their habitats are protected in accordance with the rare species provisions of the WPA and the MESA.

The Herring River system is an 1,100-acre tidally restricted estuary located in the Towns of Wellfleet and Truro. The Herring River Restoration Project seeks to incrementally re-establish tidal flow to the Herring

[Click here](#) to go to “... shall submit a State-listed Turtle Protection Plan to the Division for review and written approval ...”

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River estuary and restore native wetland habitats. The Applicant proposes to implement Phase 1 of the Herring River Restoration Project, which includes replacement of a portion of the existing earthen dike and tidal control structure at Chequessett Neck Road with a new bridge and sluice gate system; construction or alteration of other tidal control structures at the entrances to the Mill Creek and Upper Pole Dike Creek sub-basins; removal of a portion of High Toss Road where it crosses the marsh between the Lower Herring River and Mid-Herring River sub-basins; vegetation and marsh management; measures to prevent water intrusion impacts to structures on public and private properties; elevating existing low-lying roadways and replacing culverts; implementing the Phase 1 tide gate management policy to restore up to 570 acres of the estuary; and other associated activities as further described within the Notice of Intent. The Habitat Management Plan includes actions designed to avoid, minimize and or mitigate potential impacts to state-listed species and their habitats associated with Phase 1. Phase 2 of the project, to be potentially proposed at a future time, would include implementing a yet to be determined Phase 2 tide gate management policy (and associated secondary management activities) to restore all or a portion of the remaining 430 tidally restricted acres of the estuary.

The purpose of the Division's review of the proposed project under the WPA regulations is to determine whether the project will have any adverse effects on the Resource Areas Habitats of state-listed species. The purpose of the Division's review under the MESA regulations is to determine whether a Take of state-listed species will result from the proposed project, or whether the project qualifies as exempt pursuant to 321 CMR 10.14.

MA WETLANDS PROTECTION ACT (WPA)

Based on a review of the information that was provided and the information that is currently contained in our database, the Division has determined that this project, as currently proposed, will **not** adversely affect the actual Resource Area Habitat of state-protected rare wildlife species **provided** that the Habitat Management Plan is implemented as approved below. Therefore, it is our opinion that this project meets the state-listed species performance standard for the issuance of an Order of Conditions.

Please note that this determination addresses only the matter of **rare** wildlife habitat and does not pertain to other wildlife habitat issues that may be pertinent to the proposed project.

MA ENDANGERED SPECIES ACT (MESA)

- A. *Chequessett Neck Road Bridge Public Access Facilities, Culvert Replacements, Staging Areas (Town Pit, Duck Harbor Road), Elevation of Low-Lying Roads (work beyond 4ft of roads and parking areas)*

Based on the information provided and the information contained in our database, the Division finds that this portion of the project, as currently proposed, **must be conditioned** in order to avoid a prohibited Take of state-listed species (321 CMR 10.18(2)(a)). To avoid a prohibited Take of state-listed species, the following conditions must be met:

1. **Turtle Protection Plan:** Prior to the start of work, the Applicant shall submit a State-listed Turtle Protection Plan to the Division for review and written approval. Said plan shall detail procedures for protecting state-listed turtles during construction and shall be prepared and implemented by a qualified biologist in possession of a valid Scientific Collection Permit. Said Turtle Protection Plan shall be implemented as approved by the Division; any proposed changes must be

submitted to the Division for review and written approval prior to implementation of said changes.

2. Restoration of Temporarily Disturbed Areas: Prior to the start of work, the Applicant shall submit a Restoration Plan to the Division for review and approval. Said plan shall detail procedures for restoring areas of temporary disturbance to high quality native habitat, including but not limited to construction staging areas. Said Restoration Plan shall be implemented as approved by the Division; any proposed changes must be submitted to the Division for review and written approval prior to implementation of said changes.
3. Compliance Reports: By January 31st of each year, the Applicant shall submit an annual report to the Division summarizing actions completed during the prior calendar year, compliance with the conditions outlined herein (including representative photographs), and actions proposed to occur during the following calendar year. In addition, within three (3) months of the completion of all work the Applicant shall submit a detailed written report documenting completion of all work and compliance with the conditions outlined herein.

Provided the above-listed conditions are fully implemented and there are no changes to the plans, this portion of the project will not result in a Take of state-listed species. We note that all work is subject to the anti-segmentation provisions (321 CMR 10.16) of the MESA. This determination is a final decision of the Division of Fisheries and Wildlife pursuant to 321 CMR 10.18. Any changes to this portion of the project or any additional work beyond that shown on the plans may require an additional filing with the Division pursuant to the MESA. This portion of the project may be subject to further review if no physical work is commenced within five (5) years from the date of issuance of this determination, or if there is a change to this project.

B. Staging Areas (Griffin Island Road), Elevation of Low-Lying Roads (work within 4ft of roads and parking areas), Miller Frederiksen Mitigation, Way #672 Embankment

Based on a review of the information that was provided, the Division has determined that this portion of the project, as currently proposed, appears to be exempt from MESA review pursuant to 321 CMR 10.14 (12) and or (13). Any changes to the proposed project or any additional work beyond that shown on the plans may require an additional filing with the Division pursuant to the MESA.

The Division notes that a direct Take of state listed species is prohibited pursuant to 321 CMR 10.04(1), including a direct Take resulting from exempt activities. **Therefore, and in order to avoid a direct Take of state-listed species, the Applicant has proposed to implement the above-noted Turtle Protection Plan for this portion of the project.**

C. Construct Chequesset Neck Road Bridge / Tide-Gate Control Facility, Implement Phase 1 Tide Gate Management Policy and Secondary Management Activities, High Toss Road Causeway Removal

The Division hereby approves the submitted Habitat Management Plan, provided that the following conditions are met:

1. **Avoid and Minimize Direct Impacts:** Prior to the start of work associated with each respective activity, the Applicant shall submit a State-listed Species Protection Plan to the Division for review and written approval. Said plan shall detail procedures for protecting state-listed species prior to and during implementation of this portion of the project, and shall consider time of year restrictions, surveys, and other strategies developed in coordination with the Division. Said Protection Plan(s) shall be implemented as approved by the Division; any proposed changes must be submitted to the Division for review and written approval prior to implementation of said changes.
2. **Monitor Changes to State-listed Species and Their Habitats:** Prior to implementation of the Phase 1 tide gate management policy and secondary management activities, the Applicant shall submit a State-listed Species Monitoring Plan to the Division for review and written approval. Said plan shall detail procedures for monitoring state-listed species and their habitats in coordination with the restoration of tidal exchange and vegetation management activities and shall be consistent with the “Proposed Future Monitoring” proposed for each species provided in Section 3 of the Habitat Management Plan. As monitoring will likely need to be adaptive, the Monitoring Plan shall include regular and ongoing coordination with the Division to obtain approval of any proposed changes prior to implementation.
3. **Identify and Implement Opportunities to Maintain and Enhance State-listed Species Habitats:** In order to off-set short- and potentially long-term loss of habitat for certain state-listed species associated with the project, the Applicant will consult with the Division to identify and implement opportunities to maintain and enhance habitats for these species consistent with established U.S. National Park Service policies and programs. Within three (3) years of the HREC authorized management period, the Applicant shall develop Division-approved plans for each species, which may include but may not be limited to activities outlined in the “Proposed Vegetation Management” proposed for each species provided in Section 3 of the Habitat Management Plan. Plans for each species shall include detailed descriptions of all proposed activities and timelines for implementation; depending on the proposed activity, implementation of some management activities may extend beyond the three-year HREC authorized management period.

With adherence to the above-listed conditions, this portion of the project is exempt from MESA review pursuant to 321 CMR 10.14 which states: “[t]he following Projects and Activities shall be exempt from the requirements of 321 CMR 10.18 through 10.23...

(15) (T)he active management of State-listed Species habitat, including but not limited to mowing, cutting, burning, or pruning of vegetation, or removing exotic or invasive species, for the purpose of maintaining or enhancing the habitat for the benefit of rare species, provided that the management is carried out in accordance with a habitat management plan approved in writing by the Division”.

Any changes to this portion of the proposed project or any additional work beyond that described in the approved Habitat Management Plan may require a filing with the Division pursuant to the MESA. This approval is valid for five (5) years from the date of issuance of this determination.

Please note that this determination addresses only the matter of state-listed species and their habitats. If you have any questions regarding this letter, please contact Jesse Leddick, Chief of Regulatory Review, at (508) 389-6386 or jesse.leddick@mass.gov.

Sincerely,

A handwritten signature in black ink, reading "Everose Schlüter". The signature is written in a cursive, flowing style.

Everose Schlüter, Ph.D.
Assistant Director

cc: Carole Ridley, Ridley & Associates, Inc.
Timothy Smith and Geoffrey Sanders, Cape Cod National Seashore, U.S. National Park Service