



Commonwealth of Massachusetts

Division of Fisheries & Wildlife

MassWildlife

Wayne F. MacCallum, *Director*

July 10, 2009

Pembroke Conservation Commission
100 Center Street
Pembroke MA 02359

Holman Ray
Pembroke Watershed Association
PO Box 368
Pembroke, MA

RE: Project Description: Invasive plant management control in Oldham & Furnace Ponds
Project Location: Oldham Pond & Furnace Pond
NHESP File No.: 09-26729
DEP Wetland File No.: 056-0872

Dear Commissioners and Mr. Ray,

The Natural Heritage & Endangered Species Program (NHESP) of the Massachusetts Division of Fisheries & Wildlife has reviewed a *Notice of Intent* for invasive species management within Oldham and Furnace Ponds (dated June 2009, prepared by Aquatic Control Technology, Inc.). The *Notice of Intent* were submitted in compliance with the rare wildlife species section of the MA Wetlands Protection Act Regulations (310 CMR 10.59). Additional materials were submitted for review pursuant to the Massachusetts Endangered Species Act (MESA; M.G.L. c. 131A) and its implementing regulations (321 CMR 10.00).

Furnace Pond is not located within *Estimated* or *Priority* Habitat and therefore is not subject to review pursuant to 321 CMR 10.18 (MESA) or the rare species provisions of the Wetlands Protection Act (310 CMR 10.59). Therefore, all comments in this letter regarding state-listed rare species are not relevant to Furnace Pond at this time.

Oldham Pond is located within *Estimated* and *Priority* Habitat. Based on the information provided and the information contained in our database, the NHESP has determined that the proposed work in Oldham Pond is located within the actual habitat of the following state-listed species:

Scientific Name	Common Name	Taxonomic Group	State Status
<i>Leptodea ochracea</i>	Tidewater Mucket	Invertebrate Animal	Special Concern
<i>Ligumia nasuta</i>	Eastern Pond Mussel	Invertebrate Animal	Special Concern

These species and their habitats are protected pursuant to the implementing regulations of MA Endangered Species Act (321 CMR 10.00). Fact sheets for most state-listed species can be found at www.nhesp.org.

MA WETLAND PROTECTION ACT & MA ENDANGERED SPECIES ACT

While the NHESP is supportive of the goal to remove and control invasive plant species, based on the information provided and the plans, the NHESP requires additional information to continue our review of the

www.masswildlife.org

Division of Fisheries and Wildlife

Field Headquarters, 1 Rabbit Hill Rd., Westborough, MA 01581 (508) 389-6300 Fax (508) 389-7890

An Agency of the Department of Fish and Game

proposed project within Oldham Pond pursuant to 310 CMR 10.59 and 321 CMR 10.18. The NHESP is concerned that the proposed project may result in harm to the Tidewater Mucket and the Eastern Pond Mussel. A detailed survey for these mussels shall be prepared for Oldham Pond and submitted to the NHESP for review. The survey shall adhere to the following conditions:

1. The applicant shall engage a qualified mussel biologist to survey all suitable habitat within Oldham Pond consistent with the "NHESP Mussel Survey Protocol" [under revision; the biologist shall be in direct contact with Marea Gabriel 508-389-6371 to discuss mussel protocols].
2. The NHESP MUST pre-approve the candidate biologist before work begins. The ability to locate and identify state-listed mussels requires significant experience with the target mussel species. The resume/curriculum vitae of the candidate biologist, demonstrating extensive experience locating state-listed mussels, shall be sent to the NHESP for written pre-approval.
3. In order to handle state-listed species, the biologist must obtain a Commercial Scientific Collection Permit for this project site prior to conducting mussel surveys sweeps. Commercial Scientific Collection Permit Application & filing fee information is found at: http://www.mass.gov/dfwele/dfw/nhesp/regulatory_review/pdf/commercial_collect_permit_app.pdf.
4. Surveys shall occur between 1 June and 30 September unless otherwise directed in writing by the NHESP.

The survey will be used by the NHESP to assist in our determination of whether or not the proposed project will result in harm to the Tidewater Mucket or the Eastern Pond Mussel.

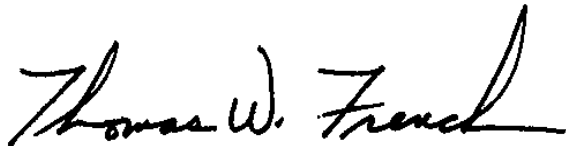
Relative to the MESA, if the project is determined to result in a probable "take", then it may be possible to redesign the project to avoid a "take". The applicant should note that if such revisions are not possible, projects resulting in the "take" of state-listed wildlife may only be permitted if they meet the performance standards for a "Conservation and Management Permit" pursuant to 321 CMR 10.04(3)(b).

FISHERIES COMMENTS

To minimize potential impacts to fisheries resources, we recommend the proponent follow the guidelines outlined in the Herbicide and Algaecide section of the 2004 *Eutrophication and Aquatic Plant Management in Massachusetts Final Generic Environmental Impact Report*

The NHESP's review pursuant to the MESA is ongoing. No pesticides, algicides or other such materials shall be utilized within Oldham Pond related to the subject filing until the NHESP has completed its review. If you have any questions about this letter, please contact Misty-Anne R. Marold, Endangered Species Review Biologist at: (508) 389-6365 (misty-anne.marold@state.ma.us).

Sincerely,



Thomas W. French, Ph.D.
Assistant Director

CC: Gerald Smith, ACT (*via email*)
Hanson Conservation Commission (*via email*)