

## 321 CMR 5.00: COLDWATER FISH RESOURCES

## Section

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5.01: Introduction and Purpose

Certain species of fish are sensitive to increases in temperature and require coldwater to fulfill one or more of their life stage requirements. Since the 1940's, the Division has documented the presence of coldwater fish resources (CFRs) in the Commonwealth where these fish occur. In the 1990's, the Division established a list of CFRs to facilitate the tracking and effective monitoring, management and protection of these resources by the Division, other state agencies, and local regulatory authorities, including conservation commissions and planning boards. Under the Department of Environmental Protection's Water Management Act regulations at 310 CMR 36.00: *Massachusetts Water Resources Management Program*, an applicant proposing a water withdrawal that may affect a CFR designated by the Division pursuant to 321 CMR 5.00 will be required to minimize any impact on the CFR. The Division has not assessed all of the waterbodies in the Commonwealth to determine their status as a CFR.

321 CMR 5.00 codifies the criteria, procedures and related definitions used by the Division to designate waterbodies as CFRs. 321 CMR 5.00 also provides notice of where the Division's current list of CFRs is available for review by regulatory authorities and the general public.

5.02: Definitions

For the purposes of 321 CMR 5.00, the following words or phrases shall have the following meanings:

Coldwater Fish means the following fish species that are sensitive to increases in temperature and require coldwater to fulfill one or more of their life stage requirements:

- (a) Longnose Sucker (*Catostomus catostomus*);
- (b) Slimy sculpin (*Cottus cognatus*);
- (c) Lake chub (*Couesius plumbeus*);
- (d) American Brook Lamprey (*Lampetra appendix*);
- (e) Burbot (*Lota lota*);
- (f) Rainbow trout (*Oncorhynchus mykiss*);
- (g) Rainbow Smelt (*Osmerus mordax*);
- (h) Landlocked salmon (*Salmo salar*);
- (i) Brown Trout (*Salmo trutta*);
- (j) Brook Trout (*Salvelinus fontinalis*); and
- (k) Lake Trout (*Salvelinus namaycush*).

Coldwater Fish Resource (CFR) means a water body that contains Coldwater Fish that were reproduced in that waterbody or a tributary thereto and use such waters to meet one or more of their life history requirements.

Director means the Director of the Division of Fisheries and Wildlife within the Department of Fish and Game.

Division means the Division of Fisheries and Wildlife within the Department of Fish and Game.

Waterbody means a lake, pond, stream, or river in its entirety unless otherwise segmented.

5.03: Criteria and Procedure for Designating a CFR

(1) The Division may, on its own initiative or in response to a reasonably supported request made pursuant to 321 CMR 5.04, assess a waterbody to determine its status as a CFR. The Division's determination of whether a waterbody should be designated as a CFR shall be based on biological data and other relevant information, including but not limited to, the following considerations:

- (a) sampling conducted by the Division for the presence of Coldwater Fish in the waterbody in accordance with stream survey and inventory protocols established by the Division;
- (b) for any trout captured in a waterbody, the Division will review one or more of the following:
  - 1. stocking records for that species into that or nearby waterbodies,
  - 2. liberation permits issued for that or nearby waterbodies, and
  - 3. the sizes of trout encountered;
- (c) non-trout coldwater fish are presumed by the Division to be reproduced in the waterbody of capture or nearby tributaries to the waterbody of capture.

(2) Waterbodies that the Division has determined meet the definition of a CFR in 321 CMR 5.02, as well as the Division's stream survey and inventory protocols, are posted on the Division's website (<http://mass.gov/dfw/cfr>).

5.04: Requests that the Division Evaluate the CFR Status of a Waterbody

(1) A person may request the Division to reconsider its designation of a waterbody as a CFR or to designate a waterbody as a CFR. Any such request must be made in writing and provide the basis for the request and include supporting biological data and information. Before taking further action on a request, the Division may require the requestor to provide additional supporting biological data or information.

(2) Within 60 days of the filing of a request, the Division will notify the requestor in writing of whether the request is reasonably supported and warrants the Division undertaking a follow-up determination of its own of the applicable waterbody's CFR status in accordance with 321 CMR 5.03(1). If the Division determines that the request is reasonably supported, the Division's determination will also identify a timeframe by which the Division will undertake its follow-up determination of the waterbody's CFR status. The Division will generally seek to undertake any such follow-up determination during the Division's standard summer sampling period of July 1<sup>st</sup> through August 31<sup>st</sup>.

(3) If the Division's determination is that a waterbody that is listed as a CFR no longer meets the definition of a CFR in 321 CMR 5.02, it shall be removed from the Division's list of CFRs posted on its website. If the Division's determination is that a waterbody not previously listed as a CFR meets the definition of a CFR in 321 CMR 5.02, it shall be added to the Division's list of CFRs posted on its website (<http://mass.gov/dfw/cfr>).

REGULATORY AUTHORITY

321 CMR 5.00: M.G.L. c. 21A, § 2(28), c. 30A, §§ 2 and 3 and c. 131, § 4(3).