

July 21, 2011

The Honorable Marc R. Pacheco
Senate Chair, Joint Committee on Environment,
Natural Resources and Agriculture
State House, Room 70
Boston, MA 02133

The Honorable Anne M. Gobi
House Chair, Joint Committee on Environment,
Natural Resources and Agriculture
State House, Room 473-F
Boston, MA 02133

Re: **Senate Bill 1854**, *An Act relative to land-taking regulations* (Senator Gale D. Candaras)

Dear Chairman Pacheco and Chairwoman Gobi;

The undersigned organizations from across the commonwealth are **strongly opposed** to the legislation before you, **Senate Bill 1854**, which would effectively gut *The Massachusetts Endangered Species Act*. The bill undoes protections for rare species provided by the Massachusetts legislature and rolls back almost 20 years of conservation of rare plants and animals. The legislation would limit the Department of Fish and Game's regulatory authority to a statutory artifact, Significant Habitat, which to date has not been designated in Massachusetts, and which by definition would not, on its own, protect rare species.

The Massachusetts Endangered Species Act (MESA) statute (M.G.L. Ch. 131A) requires that rare plants and animals listed as Endangered, Threatened or of Special Concern be protected from "take", defined "in reference to animals, means to harass, harm, pursue, hunt, shoot, hound, kill, trap, capture, collect, process, disrupt the nesting, breeding, feeding or migratory activity or attempt to engage in any such conduct, or to assist such conduct, and in reference to plants, means to collect, pick, kill, transplant, cut or process or attempt to engage or to assist in any such conduct." The statute also states that the Department has the authority to draft regulations to implement the statute. The regulations apply the statutory definition of take, stating "Disruption of nesting, breeding, feeding or migratory activity may result from, but is not limited to, the modification, degradation or destruction of Habitat." (321 CMR 10.02). In addition to the prohibition on take, the statute allows, but does not require, the state to designate "Significant Habitat" for Endangered and Threatened Species, but not Species of Special Concern.

To protect rare species, regulate take, and to let landowners know when they are at risk of violating the statute and taking a rare species, the Department has delineated Priority Habitat (321 CMR 10.11-10.25) for Endangered, Threatened, and Species of Special Concern. This was done through the normal process of promulgating regulations, including public hearing and consideration of comments. The

mapping of regulated areas is common to many forms of environmental law, such as the Wetlands Protection Act, as a means to notify landowners that a statute may apply to them and that they need to review their plans with the applicable agency. If during this review it is determined that the proposed activity will not result in a take, the landowner may proceed. The bill before you would remove the Department's authority to regulate for a rare species outside of Significant Habitat, thus gutting their authority to regulate take – leaving rare species unprotected and landowners without a mechanism to know if they are at risk of taking a rare species. Landowners would be deprived of an orderly, timely process to know whether or not they may cause a take, and thereby will be at risk of prosecution for destruction of rare species that could be avoided through the regulatory process.

Additionally, the program is responsive to concerns from the regulated community and has implemented regulatory changes which received broad support from both conservation organizations and developers. The regulatory changes increased transparency in priority habitat mapping, streamlined review for species of special concern, set permit mitigation standards and guidance, clarified and expanded grandfathering for sites, expanded exemptions from review, extended the time within which shovels must be in the ground from three to five years, and allowed comprehensive MESA reviews and permits for certain municipalities. The bill would require that the Department rescind these regulations. For more information, see the attached Department of Fish and Game summary of the regulatory changes.

The Massachusetts Endangered Species Act is one of the most important and effective environmental laws in the commonwealth, and the Natural Heritage & Endangered Species Program within the Department of Fish and Game, which implements MESA, is one of the most effective rare species programs nationally. Land protection programs, conservation commissions, coastal waterbird protection programs, and wetlands restoration programs are all guided by the information and regulatory decisions provided through MESA. To undo their authority to protect rare species from take would be devastating.

Thank you for the opportunity to provide this perspective and information. Again, we strongly oppose this legislation. For more information, please contact Mass Audubon's Legislative Director, Jennifer Ryan at 617.523.8448 or the Environmental League of Massachusetts' Vice President for Policy, Nancy Goodman at 617.742.2553. For more background on this bill, please see the attached piece from the Valley Advocate, *Fighting for Habitat*, November 26, 2009.

Sincerely,

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