

By Mr. Costello, a petition (accompanied by bill, Senate, No. 1096) of Nicholas J. Costello, Robert A. Durand, Gerard A. Bertrand, Lucile P. Hicks, other members of the General Court and another for legislation to provide protection for endangered and threatened species. Natural Resources and Agriculture.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Eighty-Six.

AN ACT TO PROVIDE PROTECTION FOR ENDANGERED AND THREATENED SPECIES.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Section 4 of chapter 131 of the General Laws,
2 as most recently amended by chapter 726 of the acts of 1979, is
3 hereby further amended by striking out clause 13A.

1 SECTION 2. Section twenty-six A of chapter one hundred and
2 thirty-one of the General Laws, as most recently amended by
3 chapter seven hundred and twenty-six of the acts of nineteen hun-
4 dred and seventy-nine, is hereby repealed.

1 SECTION 4. The General Laws are hereby amended by insert-
2 ing after chapter one hundred and thirty-one the following chap-
3 ter: —

4 **CHAPTER 131A.**

5 **MASSACHUSETTS ENDANGERED SPECIES ACT.**

6 Section 1. Title.

7 This chapter shall be known and may be cited as the Massa-
8 chusetts Endangered Species Act.

9 Section 2. Definitions.

10 For the purposes of this chapter, the following definitions shall
11 apply: —

12 “Director” means the Director of the Division of Fisheries and
13 Wildlife within the Massachusetts Department of Fisheries, Wild-
14 life and Environmental Law Enforcement.

15 “Endangered species” means any species of fish, plantlife, or
16 wildlife in danger of extinction throughout all or a significant por-
17 tion of its range including, but not limited to, species listed from
18 time to time as “endangered” under the provisions of the Federal
19 Endangered Species Act of 1973 as amended and in addition to
20 those species listed in the Code of Mass. Regulations (321 CMR
21 8.01). Any reproductivity viable species of fish, plantlife, or wild-
22 life in danger of extirpation from the commonwealth, as docu-
23 mented by biological research and inventory, shall be included.

24 “Fish or wildlife” means any member of the animal kingdom
25 including, but not limited to, any mammal, bird, reptile, amphib-
26 ian, fish, mollusk, crustacean, arthropod, or other invertebrate,
27 or any part, product, egg or offspring, or the dead body or parts
28 thereof.

29 “Habitat” means the geographic area which contains the physi-
30 cal or biological features essential to the conservation and sur-
31 vival of the species. Habitat shall include significant areas used
32 for courtship, mating, and other reproductive activities, rearing
33 of young, overwintering, feeding, and migration of endangered
34 and threatened species.

35 “Person” means an individual, corporation, partnership, trust,
36 association, or other private entity, or any officer, agent, depart-
37 ment, or instrumentality of the federal government, of any state
38 or its political subdivisions.

39 “Plant or plantlife” means any member of the plant kingdom,
40 including seeds, roots, or other parts.

41 “Species” includes any subspecies of fish, plantlife, or wildlife,
42 and any distinct population segment of fish, plants, or wildlife of
43 the same species which interbreeds or cross pollinates when
44 mature.

45 “Species of Special Concern” includes any species of fish, wild-
46 life or plantlife which has been documented by biological research
47 and inventory to be suffering a decline that could threaten the
48 species in the Commonwealth if allowed to continue unchecked,
49 or that occurs in such small numbers or with such a restricted dis-
50 tribution or specialized habitat requirements that it could easily

51 become threatened within the Commonwealth, listed under the
52 provisions of the Code of Mass. Regulations (321 CMR 8.01).

53 "Take" means, in reference to fish and wildlife, to harass, harm,
54 pursue, hunt, shoot, hound, kill, trap, capture, collect, or attempt
55 to engage in any of this conduct.

56 "Take" means, in reference to plants, to collect, pick, cut, dig
57 up, or destroy in any manner.

58 "Threatened species" means any species of fish, wildlife or wild
59 plantlife likely to become an endangered species within the fore-
60 seeable future throughout all or a significant portion of its range
61 including, but not limited to, species listed from time to time as
62 "threatened" under the provisions of the Federal Endangered
63 Species Act of 1973 as amended and in addition those species listed
64 in the Code of Mass. Regulations (321 CMR 8.01). Any repro-
65 ductively viable native species declining or rare within the com-
66 monwealth as determined by biological research and inventory,
67 and likely to become endangered in the commonwealth in the fore-
68 seeable future shall be included.

69 Section 3. Prohibited Acts.

70 (a) Except as otherwise provided in this chapter, no person may
71 take, possess, transport, export, process, sell or offer for sale, buy
72 or offer to buy, nor shall a common or contract carrier know-
73 ingly transport or receive for shipment any fish and wildlife species
74 listed as endangered, threatened or a species of special concern.

75 (b) Except as otherwise provided in this chapter, no person may
76 take, possess, transport, export, process, sell or offer for sale, buy
77 or offer to buy, nor shall a common or contract carrier know-
78 ingly transport or receive for shipment any plantlife listed as en-
79 dangered, threatened or a species of special concern. No person
80 may take or possess from state-owned land, or private lands with-
81 out the permission of the landowner, any species of plantlife list-
82 ed as endangered, threatened or a species of special concern.

83 (c) Except as otherwise provided in this chapter, no person may
84 significantly modify or denigrate, nor shall state monies be used
85 to fund the projects that may significantly modify or denigrate,
86 an area designated as an endangered or threatened species habitat
87 by the Director pursuant to Section 5 of this chapter, so as to
88 reduce the viability of the habitat to support said species or so

89 as to kill, injure or appreciably reduce the likelihood of survival
90 of said species.

91 Section 4. Exemptions.

92 (a) Persons may transport, possess, or sell, in accordance with
93 the terms of any necessary state and federal permit, any species
94 appearing on any of the lists prepared in accordance with section
95 five of this chapter which enters the commonwealth from another
96 state or from a point outside the territorial limits of the United
97 States.

98 (b) The Director may permit the taking, possession, purchase,
99 sale, transportation, exportation, or shipment of any species ap-
100 pearing on the list of endangered or threatened species or species
101 of special concern developed by the Director pursuant to section
102 five of this chapter for scientific, or educational purposes, or for
103 propagation in captivity of these species.

104 (c) The Director may permit the removal, capture, or destruc-
105 tion of any species appearing on the list of endangered or threat-
106 ened species or species of special concern developed by the Direc-
107 tor pursuant to section five of this chapter to protect human health,
108 when a public health hazard exists as certified by the Massachu-
109 setts Department of Public Health.

110 Section 5. Powers and Duties of Director.

111 (a) The Director shall conduct investigations, and consult with
112 the Nongame Advisory Committee established pursuant to section
113 five B of Chapter 131 of the General Laws, in order to determine
114 whether any species of fish, plant, or wildlife constitutes an endan-
115 gered or threatened species or species of special concern.

116 (b) Criteria for determining endangered, threatened, or special-
117 concern status shall be based on biological data including, but not
118 limited to population status and trends; whether the species is
119 native or has been introduced; vulnerability, as determined by
120 declining numbers of individuals; specialization, as determined by
121 unique habitat requirements; restricted distribution, as determined
122 by limited geographic range; and rarity, as determined by occur-
123 rence in limited numbers.

124 (c) The Director shall list endangered, threatened, and special
125 concern species and shall review said list at least once every 5 years
126 for the purpose of listing or de-listing species. The burden of
127 proof for de-listing species shall be on the persons requesting said

128 change in status. Said list shall be published in the Code of Mas-
129 sachusetts Regulations at the time of the review.

130 (d) The Director shall designate and review from time to time
131 the habitats of endangered and threatened species based on the
132 best scientific data available, and after taking into account any
133 relevant impact to the survival of the endangered or threatened
134 species of designating an area as an endangered or threatened
135 species habitat.

136 (e) The location of the designated habitat areas shall be pub-
137 lished in the Code of Massachusetts Regulations except in cases
138 where such publication may result in further threats to the species.
139 Owners of property containing designated habitats shall be noti-
140 fied prior to designation. Maps showing the location of designated
141 habitats shall be made available to local conservation commis-
142 sions or, where none exists, the local board of selectmen, in those
143 communities where such habitats occur.

144 (f) The Director shall, within one year of the effective date of
145 this chapter, promulgate regulations, published in the Code of
146 Massachusetts Regulations, and establish programs deemed nec-
147 essary to carry out the purposes of this chapter. An advisory com-
148 mittee shall be established for the purpose of assisting the Direc-
149 tor in the development of regulations. Said advisory committee
150 shall consist of one representative from the Massachusetts Home-
151 builders Association, one representative from the Massachusetts
152 Department of Transportation and Construction, one represent-
153 ative from the Massachusetts Audubon Society, a zoologist, a bot-
154 anist, one representative from the Executive Office of Commu-
155 nities and Development, one representative from the Executive
156 Office of Environmental Affairs, and one representative from the
157 Massachusetts Wildlife Federation. The committee shall be ap-
158 pointed and chaired by the Director.

159 (g) Landowners with designated habitat may apply for a con-
160 servation restriction and/or a tax abatement.

161 Section 6. Alteration or Sale of Habitat Areas.

162 (a) Before any person significantly modifies or denegrates an
163 area designated as an endangered or threatened species habitat
164 by the Director pursuant to section five of the chapter, the per-
165 son shall submit to the Director:

166 i) full plans and complete description of the project and the
167 anticipated use;

168 ii) alternatives to the proposed project and anticipated use;

169 iii) impacts of the proposed project and anticipated use
170 on the subject species;

171 iv) full plans for the protection of any endangered or threatened
172 species present and the mitigation measures to be taken to provide
173 compensation for the impact, including but not limited to habitat
174 replication and enhancement; and

175 (v) any additional information the Director may require.

176 (b) No action as to the modification or denegation of the des-
177 igned habitat area may commence until the Director grants writ-
178 ten approval. The Director shall render a decision after consul-
179 tation with the Nongame Advisory Committee within 45 days of
180 receiving all required information, but approval shall be grant-
181 ed only after the Director finds that the proposed action will not
182 significantly reduce the likelihood of survival of the endangered
183 or threatened species involved.

184 (c) Prior to the sale of any land containing an area designated
185 as an endangered or threatened species habitat by the Director
186 pursuant to section five of this chapter, the person owning such
187 land shall cause to be noted on the property deed and any plan
188 attached thereto or referenced therein that such designated hab-
189 itat exists on the subject land.

190 Section 7. Plant Protection Agreement.

191 (a) Voluntary real property agreement where landowner agrees
192 not to take plants that are endangered, threatened, or a species
193 of special concern.

194 Section 8. Private Rights of Action.

195 (a) Any conservation commission, or where none exists, the
196 board of selectmen, or any 10 citizens of the commonwealth may
197 appeal determination of the Director and owners of land deter-
198 mined by the Director to contain endangered or threatened species
199 habitat may request a hearing on the Director's notification of
200 habitat designation within 21 days of such determination, desig-
201 nation, or notice thereof.

202 (b) Except for cases reviewed under section 4, any conservation
203 commission or 10 citizens of the commonwealth may commence
204 a civil suit to:

205 (i) enjoin any person from violating any provision of this chap-
206 ter or any regulations promulgated under its authority; or

207 (ii) to compel the Director to enforce the provisions of this
208 chapter, or any regulation promulgated under its authority.

209 (c) No action may commence under subsection 8b prior to the
210 Director receiving at least 10 days written notice of any alleged
211 violation of or any alleged failure to enforce the provisions of this
212 chapter or any regulation promulgated under its authority.

213 Section 9. Any person who violates any provision of this chap-
214 ter may be assessed a civil penalty of not less than ten-thousand
215 dollars for each offense.

