



November 5, 2013

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

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

Re: Opposition to S.345, An Act relative to land taking regulations and S.411, An Act relative to reinforcing the Massachusetts Endangered Species Act; Support for H.756, An Act relative to the Massachusetts Endangered Species Act

Dear Chairman Pacheco and Chairwoman Gobi;

Thank you for the opportunity to provide comments regarding legislation pertaining to the Massachusetts Endangered Species Act (MESA). The undersigned organizations from across the Commonwealth are strongly **opposed** to **S.345** and **S.411**, two bills which would undo protections for rare species and roll back **twenty years** of successful conservation of rare plants and animals.

In addition, we, the undersigned organizations, **support H.756, An Act relative to the Massachusetts Endangered Species Act** - a consensus bill that would provide much-needed guidance for both development and conservation by more explicitly codifying existing regulations used to implement MESA. **H.756** would also increase transparency in permitting by requiring extensive public notice, a public comment period, and property owner notification for any newly mapped habitat.

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 (NHESP) within the Department of Fish and Game (DFG) and Division of Fisheries and Wildlife (DFW), which implements MESA, is one of the best rare species programs nationally. Land protection programs, conservation commissions, coastal waterbird protection programs, and wetlands restoration programs are all guided by the scientific information and regulatory decisions provided through MESA.

S.345 and **S.411** would restrict DFW’s authority to regulate endangered species protection only to land designated as “Significant Habitat”; however, this term is a statutory artifact. To date, no land has been designated “Significant Habitat,” a designation that would restrict use of the land for any purpose other than species protection, putting it off-limits to development. Instead, DFW deployed its expertise to develop a flexible, efficient screening process entailing the designation of “Priority Habitat” and corresponding review of the impacts of proposed projects on state-listed species.

We believe “Priority Habitat” to be an efficient regulatory tool. In FY11, of the 1,134 projects reviewed by DFW, 77 percent moved forward with no action required by the landowner. Of the projects reviewed, 20 percent were allowed to move forward with conditions (e.g. time of year restrictions, construction monitoring), and 3 percent required a MESA Conservation and Management Permit. “Priority Habitat” is being well utilized as a screening tool in order to identify the relatively small subset of projects that do require conditioning and/or a permit in order to adequately protect endangered species.

S.345 and **S.411** would remove the DFW’s authority to regulate for a rare species outside of “Significant Habitat”, thus gutting its authority to regulate existing “Priority Habitat” – leaving rare species unprotected and landowners without a mechanism to know if they are at risk of violating the MESA statute. Landowners would thereby be at risk of prosecution for destruction of rare species, a risk that can be avoided through the existing regulatory process.

The NHESP program is responsive to concerns from the regulated community and includes regulatory changes (2005 and 2010) 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.

These regulatory changes are reasonable and fair and indicate willingness on behalf of DFW to consider and address concerns. We believe the issues being raised now were in part addressed in the 2010 regulatory revisions, such as providing new public notice and comment procedures on the “Priority Habitat” maps. We also believe that additional concerns, such as those over the need for additional notification for small landowners, can be addressed through the passage of **H.756**.

H.756 would:

- More explicitly codify the DFW regulation known as priority habitat mapping, a flexible, efficient screening process used to review proposed project impacts on state-listed species. This would clearly define the review process for landowners.
- Require DFW to update and make available to the public the statewide priority habitat map, subject to an extensive public notice process and 60-day public comment period.
- Provide notification of a public comment period to owners of any properties proposed to be added as priority habitat on the new map.

- Require DFW to define priority habitat using the best scientific evidence available, including a comprehensive examination of individual records documenting the occurrence of a state-listed species on land mapped as priority habitat.
- Lower the mitigation ratio to reduce the amount of conservation land a developer needs to permanently protect external to the proposed work site, if a development project will impact priority habitat for species of special concern (mitigation ratio decrease from 1.5:1 to 1:1).
- Provide a 14-day public comment period on draft permits, without increasing the time period for issuance of permits.

It is our belief that this consensus bill, which has been drafted with input from a variety of stakeholders, represents a common sense solution to regulatory issues related to the implementation of MESA.

There are many environmental challenges ahead for the residents of Massachusetts; the impacts of climate change are becoming more noticeable and are changing how we perceive nature. We will better be able to adapt to a changing climate if our natural defenses are resilient and rich in a natural diversity of species. The first step in any natural security plan should be to step up protection of species that are endangered, threatened or of special concern. We should not weaken our defenses in times of uncertainty, and we should not weaken our resolve to be leaders in species protection and environmental protection.

We respectfully urge you to report **H.756** favorably out of committee.

Thank you for the opportunity to provide this perspective and information.

For more information, please contact Mass Audubon's Legislative Director, Karen Heymann at 617.523.8448 or the Environmental League of Massachusetts' Vice President for Policy, Nancy Goodman at 617.742.2553.

Sincerely,

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