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State Endangered Species Act Statutes:

Massachusetts



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MA Endangered Species Act (MESA) § 1 – 7

Current through Chapters 1-173 of the 2020 Legislative Session of the 191st General Court.

§ 1: Definitions

The following words shall have the following meanings unless the context clearly requires otherwise:—

"Alter", to change the physical or biological condition of a habitat in any way that detrimentally affects the capacity of the habitat to support a population of endangered or threatened species.

"Animal", any member of the animal kingdom including, but not limited to, any mammal, bird, reptile, amphibian, fish, mollusk, crustacean, arthropod or other invertebrate or any part, product, egg or offspring or the dead body or any part thereof.

"Director", the director of the division of fisheries and wildlife within the department of fisheries, wildlife and environmental law enforcement, who shall have all powers hereunder that exist for purposes of chapter one hundred and thirty-one.

"Endangered species", any species of plant or animal in danger of extinction throughout all or a significant portion of its range including, but not limited to, species listed from time to time as "endangered" under the provisions of the Federal Endangered Species Act of 1973, as amended, and species of plants or animals in danger of extirpation, as documented by biological research and inventory.

"Land in agricultural use", land primarily and directly used in raising animals including, but not limited to, dairy cattle, beef cattle, poultry, sheep, swine, horses, ponies, mules, goats, bees and fur-bearing animals, for the purpose of selling such animals or a product derived from such animals in the regular course of business; or when primarily and directly used in a related manner which is incidental thereto and represents a customary and necessary use in raising such animals and preparing them or the products derived therefrom for market; or when primarily and directly used in raising fruits, vegetables, berries, nuts and other foods for human consumption, feed for animals, tobacco, flowers, sod, trees, nursery or greenhouse products and ornamental plants and shrubs for the purpose of selling such products in the regular course of business; or when primarily and directly used in raising forest products and certified, in consultation with the division of fisheries and wildlife, by the state forester, to be a planned program to improve the quantity and quality of a continuous crop for the purpose of selling such products in the regular course of business; or when primarily and directly used in a related manner which is incidental thereto and represents a customary and necessary use in raising such products and preparing them for market.



"Land in aquacultural use", land and waters used primarily and directly in the commercial cultivation of aquatic organisms including finfish, mollusk or crustacean in a controlled environment.

"Normal maintenance or improvement", (a) all tilling and harvesting practices customarily employed to enhance existing growing conditions; (b) the pasturing of animals including the construction and maintenance of such fences as may be required; (c) the use of fertilizers, pesticides, herbicides and other materials, subject to all state and federal laws and regulations governing the use thereof; (d) the construction, grading or restoration of field ditches, subsurface drains, grass waterways, vents, access roads, farm ponds and similar projects to improve drainage, prevent erosion, provide more effective use of rainfall and improve equipment operation and efficiency, in order to improve conditions for the growing of existing crops or the raising of animals; (e) the cultivation of cranberries, including the following practices: (i) sanding operations using existing pits; (ii) cleaning of cross ditches, canals and natural waterways; (iii) repair and replacement but not enlargement of water control structures, including flumes, pumps, dikes and piping above and below ground; (iv) repair, replacement and regrading of existing cranberry bogs; (v) repair and cleaning of reservoirs, dams and water storage systems within the limits of existing water rights.

"Person", an individual, corporation, partnership, trust, association or other private entity or any officer, agent, department or instrumentality of the federal government or any state or its political subdivisions.

"Plant", a member of the plant kingdom including seeds, roots, or other parts.

"Significant habitat", specific areas of the commonwealth, designated in accordance with section four, in which are found the physical or biological features important to the conservation of a threatened or endangered species population and which may require special management considerations or protection.

"Species", any subspecies or variety of plant or animal and any distinct plant or animal population which interbreeds or cross pollinates when mature.

"Species of special concern", any species of plant or animal which has been documented by biological research and inventory to have suffered a decline that could threaten the species if allowed to continue unchecked or that occurs in such small numbers or with such a restricted distribution or specialized habitat requirements that it could easily become threatened within the commonwealth.

"Take", in reference to animals, 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, to collect, pick, kill, transplant, cut or process or attempt to engage or to assist in any such conduct.

"Threatened species", any species of plant or animal likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range including, but not limited to, species listed from time to time as "threatened" under the provisions of the Federal Endangered Species Act of 1973, as amended, and any species declining or rare as determined by biological research and inventory and likely to become endangered in the



foreseeable future; provided, however, that the inclusion of any species on the Federal Threatened Species list shall not limit the discretion of the director to list said species as "endangered".

§ 2: Possession; alteration of habitat; exempt artifacts

Except as otherwise provided in this chapter, no person may take, possess, transport, export, process, sell or offer for sale, buy or offer to buy, nor shall a common or contract carrier knowingly transport or receive for shipment, any plant or animal species listed as endangered, threatened or of special concern or listed under the Federal Endangered Species Act.

Except as otherwise provided in this chapter, no person may alter significant habitat.

Possession, transfer, sale or exchange of scrimshaw, curios, collectibles, antiques or artifacts of endangered species, mounted or unmounted, which items can be reasonably determined to pre-date January first, nineteen hundred and seventy-three, shall be exempt from the provisions of this chapter.

§ 3: Exceptions

Any person may transport, possess, or sell, in accordance with the terms of any necessary state and federal permit, any species appearing on any of the lists prepared in accordance with section four which enters the commonwealth from another state or from a point outside the territorial limits of the United States. A person may possess or propagate all plants listed as endangered, threatened or special concern; provided, however, that the sources for such propagation or possession shall not be taken from the wild. All nurserymen may sell all plants listed as endangered, threatened or of special concern; provided, however, that the sources for such sale shall not be taken from the wild.

The director may permit the taking, possession, purchase, sale, transportation, exportation or shipment of any species appearing on the list of endangered or threatened species or species of special concern developed by the director pursuant to section four for scientific, conservation, management or educational purposes, or for or from propagation in captivity and may permit the taking of special concern species for the purposes of falconry pursuant to regulations promulgated by the director.

The director may permit the removal, capture, or destruction of any species appearing on the list of endangered or threatened species or species of special concern developed by the director pursuant to section four to protect human health, when a public health hazard exists as certified by the department of public health.

A landowner may construct a single family house covering no more than three thousand square feet of ground and install any necessary utilities to service said house and construct in a reasonable fashion a single access driveway to the nearest public or private way on a lot having an area of at least three acres; provided, however, that the lot on which said construction takes place was owned by said landowner and in existence on January first, nineteen hundred and ninety; and provided, further, that said lot was not held in common ownership with any adjoining land as of said date. For purposes of this paragraph, the phrase "in existence" shall mean a lot shown on a definitive plan that has received final approval under chapter



forty-one or shown on a plan that has been endorsed under section eighty-one P of said chapter.

§ 4: Determination of endangered, threatened or special concern status

The director shall conduct investigations and consult with the natural heritage and endangered species advisory committee established pursuant to section five B of chapter one hundred and thirty-one in order to determine whether any species of plant or animal constitutes an endangered or threatened species or species of special concern.

Criteria for determining endangered, threatened or special concern status shall be based on biological data including, but not limited to, reproductive and population status and trends, whether the species is native or has been introduced, vulnerability, as determined by threats to the species or its habitat, specialization, as determined by unique habitat requirements; restricted distribution, as determined by limited or disjunct geographic range and rarity, as determined by a limited number of occurrences or by occurrence in limited numbers.

The director shall list endangered, threatened and special concern species and shall review said list at least once every five years for the purpose of listing or delisting species. The burden of proof for delisting species shall be on the person requesting such change in status. The establishment of said list and any proposed changes thereto shall be by regulation after a public hearing and shall be subject to the provisions of chapter thirty A.

Upon the effective date of the regulations adopted hereunder the director shall designate significant habitats of endangered or threatened species populations by regulation, after a public hearing, and subject to the provisions of chapter thirty A, on the basis of the best scientific evidence available, after taking into consideration the following criteria:

- (i) the current and foreseeable threats to the population or its habitat;
- (ii) the size of the population;
- (iii) the potential benefits of designation to the population and to the status and welfare of the species generally; and
- (iv) current and foreseeable uses of the land.

The director shall review and designate qualifying significant habitats on a yearly basis and may, from time to time, revise such designation by regulation as appropriate. The designation and revision of designation of significant habitat by the director shall constitute the adoption of regulations subject to the provisions of chapter thirty A. The location of designated significant habitat shall be marked on maps available for inspection by record owners and shall be described by metes and bounds or another adequate method which identifies the boundaries of the significant habitat.

Record owners of lands or interests in lands containing habitat to be so designated shall be notified by certified mail not less than thirty days prior to the public hearing regarding such designation. Upon the adoption of the regulation designating the significant habitat, the director shall cause a document identifying the location of each habitat so designated, together with a list of the assessed owners of such lands, to be recorded in the proper registry of



deeds or, if such lands are registered, in the registry district of the land court, and shall send, by certified mail, a copy thereof to each record owner. Maps showing the location of significant habitats shall be made available to local zoning boards, planning boards and conservation commissions or, where none of the above exist, the local board of selectmen or mayor and the city council, in those communities where such habitats occur.

Local zoning boards, planning boards or conservation commissions shall notify the director, in writing, of any and all petitions, requests or applications for permits, orders or approvals regarding proposed activity within significant habitats within twenty-one days of the filing of such petitions, requests or applications.

Record owners of lands or interests in land containing significant habitat may appeal the director's designation of such significant habitat to the secretary of the office of environmental affairs by sending, by certified mail, a notice of appeal to said secretary within twenty-one days of such designation. Said secretary shall hold a hearing on such appeal within a reasonable time, and in no case later than one hundred and twenty days from the date of such designation. Said secretary shall consider the information and testimony presented at the hearing and shall make a determination thereon within sixty days. Said secretary shall reverse the decision of the director only upon a finding that such decision was without substantial basis in fact. Upon the reversal of a decision, the director shall rescind the regulation, or a part thereof, which established such designation, as it affects the appealing record owner.

In addition to the aforementioned appeal, owners of land containing significant habitat may, within twenty-one days of designation, petition the director to consider purchasing such habitat from monies appropriated by the general court or from bond funds.

The division of fisheries and wildlife shall, after a public hearing and in accordance with the procedures set forth in chapter thirty A, adopt any regulations necessary to implement the provisions of this chapter. Said regulations shall be promulgated with the advice and assistance of a technical advisory committee to consist of nine persons to be appointed by the director; two of whom shall be university or college professors from two separate educational institutions with expertise in endangered species biology, one of whom shall be a member of a Massachusetts environmental organization; one of whom shall be a member of a nongame advisory committee established pursuant to section five B of chapter one hundred and thirty-one; one of whom shall be a member of the sporting community, one of whom shall be a representative of the utilities industry; one of whom shall be a representative of the real estate development industry, one of whom shall be a member of the staff of the department of highways and one of whom shall be a representative of agricultural interests.

The division of fisheries and wildlife shall, at least sixty days prior to filing such regulations under the provisions of section five of chapter thirty A, file such regulations with the clerk of the house of representatives who shall forward such regulations to the joint committee on natural resources and agriculture for its review at least sixty days prior to the effective date of said regulations. Said regulations shall include, but not be limited to: criteria to be applied by the director in determining which activities will reduce the viability of significant habitat to support endangered or threatened species; criteria to further define alteration of a significant habitat; and other regulations designed to carry out the purposes of this chapter. This provision



shall not affect existing regulations listing endangered, threatened or special concern species in effect on the effective date of this chapter.

All agencies, departments, boards, commissions and authorities shall utilize their authorities in furtherance of the purposes of this chapter and shall review, evaluate and determine the impact on endangered, threatened and special concern species of all works, projects or activities conducted by them and shall use all practicable means and measures to avoid or minimize damage to such species.

§ 5: Habitat alteration permits

(a) Before any person alters a significant habitat, except as provided in paragraph (b) below or in paragraph four of section three, such person shall submit to the director the following:

- (i) full plans and a complete description of the project and the anticipated use;
- (ii) alternatives to the proposed project and anticipated use;
- (iii) impacts of the proposed project and anticipated use on the subject species;
- (iv) full plans for the protection of any endangered or threatened species present and the mitigation measures to be taken to provide amelioration of the impact;
- (v) the potential economic effects of the proposed project on the person and the community; and
- (vi) any additional information the director may require.

No alteration of a significant habitat may commence without a written permit issued by the director. The director shall render a decision within forty-five days of receiving all required information. A permit shall be granted only upon a finding by the director that the proposed action will not reduce the viability of the significant habitat to support the endangered or threatened species population involved.

Vegetation management activities conducted by gas or electric utility companies on existing rights of way for which the natural heritage and endangered species program of the division of fisheries and wildlife has reviewed vegetation management and yearly operational plans therefor and has made recommendations with respect to avoidance, minimization or mitigation of impacts on endangered, threatened or special concern species, and for which said utility company has incorporated any such avoidance, minimization or mitigation measures into said plans, shall forthwith be issued a permit by the director without further conditions; provided, however, that the permit may be conditioned upon implementation of any such avoidance, minimization or mitigation measures. Failure of the natural heritage and endangered species program of the division of fisheries and wildlife to make any such recommendations within ninety days of receipt of vegetation management or yearly operating plans for review shall be equivalent to the issuance of a permit by the director.

(b) Any work, project or activity of any person for which (i) a final environmental impact report certified by the secretary of environmental affairs as adequately and properly complying with the provisions of sections sixty-one to sixty-two H of chapter thirty has been issued, or (ii), an environmental notification form has been filed and the secretary has certified that an



environmental impact report is not required, and for which the natural heritage and endangered species program of the division of fisheries and wildlife has reviewed the project and made recommendations with respect to avoidance, minimization or mitigation of impacts on endangered, threatened or special concern species, and for which the project proponent has incorporated any such avoidance, minimization or mitigation measures in the project design, shall forthwith be issued a permit by the director without further conditions, except that the permit may be conditioned upon implementation of any such avoidance, minimization or mitigation measures. Failure of the natural heritage and endangered species program of the division of fisheries and wildlife to make any such recommendations within the following time periods shall be equivalent to the issuance of a permit by the director: (A) if an environmental impact report is not required, ninety days after the secretary issues a notice of the receipt of an environmental notification form, as described in section sixty-two A of chapter thirty and the regulations thereunder; or (B) if an environmental impact report is required, prior to certification by the secretary that the final environmental impact report adequately and properly complies with sections sixty-one to sixty-two H of chapter thirty.

(c) Record owners of lands or interests in lands aggrieved by a decision of the director or by his failure to act hereunder may appeal to the secretary of the office of environmental affairs by sending, by certified mail, a notice of appeal to the secretary within twenty-one days of such decision or failure to act. The secretary shall hold a hearing on such appeal within a reasonable time, and in no case later than one hundred twenty days from the date of such decision. The secretary shall consider the information and testimony presented at the hearing and shall make a determination thereon within sixty days. The secretary shall overturn the decision of the director only upon a finding that it was without substantial basis in fact, but shall fully examine on the merits any appeal involving the director's failure to act.

(d) The provisions of this section shall not apply to work performed in the normal maintenance or improvement on land in agricultural or aquacultural use.

(e) In addition to the appeal described in paragraph (c), a landowner aggrieved by a decision of the director may file an action in superior court department of the trial court to determine whether such decision constitutes a taking requiring compensation under the Constitution of the United States.

§ 6: Penalties; disposition of fines received

(a) Any person who violates the provisions of the first paragraph of section two or the rules and regulations promulgated thereunder, shall be punished by a fine of not less than five hundred dollars or imprisonment for not more than ninety days or both such fine and imprisonment. Upon a second or subsequent conviction such person shall be punished by a fine of not less than five thousand dollars nor more than ten thousand dollars or by imprisonment for not more than one hundred and eighty days or both such fine and imprisonment.

(b) Any person who violates the provisions of the second paragraph of section two or rules and regulations promulgated thereunder, shall be punished by a fine of not less than one thousand dollars nor more than ten thousand dollars or by imprisonment for not more than ninety days or both such fine and imprisonment. Upon a subsequent conviction, such person shall be punished by a fine of not less than ten thousand dollars nor more than twenty thousand



dollars or by imprisonment for not more than one hundred and eighty days or both such fine and imprisonment. In addition or as an alternative to such penalties, any such person may be ordered to restore the significant habitat to its prior condition.

(c) Any person who violates section 2 or any rule or regulation adopted under this chapter shall be subject to a civil assessment not to exceed \$10,000 for each such violation. The civil assessment may be asserted in an action brought on behalf of the commonwealth in a court of competent jurisdiction.

The superior court shall have jurisdiction to enjoin violations of, or to grant such additional relief as it deems necessary or appropriate to secure compliance with this chapter upon petition of the director or the attorney general.

(d) The commission of a prohibited act with respect to each individual animal or plant, or part thereof, shall constitute a separate violation.

(e) All fines and assessments received on account of litigation or settlement thereof for a violation of this chapter or the regulations promulgated thereunder shall be paid to the commonwealth and shall be deposited into the Natural Heritage Endangered Species Fund established pursuant to section 35D of chapter 10 for the purpose of aiding in the protection and enhancement of rare, threatened and endangered species in the commonwealth.

§ 7: Fees

The director may establish fees for environmental review and assessment pursuant to this chapter, the amount of which shall be determined in accordance with section 3B of chapter 7. Monies received by the commonwealth from fees collected under this chapter shall be credited to the Natural Heritage and Endangered Species Fund, established by section 35D of chapter 10.

