

SENATE No. 2209

The Commonwealth of Massachusetts

In the Year Two Thousand Fourteen

An Act relative to land taking regulations.

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 1 of chapter 131A of the General Laws, as appearing in the 2010
2 Official Edition, is hereby amended by inserting, after the definition of “Plant,” the following
3 new definition:-

4 “Priority habitat,” the geographic extent of habitat for an endangered or threatened
5 species or species of special concern as delineated by the division of fisheries and wildlife based
6 on the best scientific evidence available and as set forth in section 4 for the purpose of
7 conducting a screening of a proposed project or activity to determine whether the project or
8 activity will result in a take of said species.

9 SECTION 2. Section 4 of chapter 131A of the General Laws, as so appearing, is hereby
10 amended by inserting before the last paragraph the following paragraphs:-

11 The division shall comply with the following public notice and comment requirements
12 each time it reevaluates the priority habitat map:

13 (1) Upon completion of its re-evaluation of the current priority habitat map, the division
14 shall provide a public comment period of not less than 60 days on the proposed updated priority
15 habitat map, including all areas to be newly added as priority habitat and all areas to be removed
16 from priority habitat.

17 (2) The division shall post its proposed updated priority habitat map, together with a
18 summary explanation of the changes to the map, on the division’s website. The division’s
19 website shall include the capability to allow the public to determine whether an individual parcel
20 of property is located within priority habitat. The division also shall publish notice of the
21 availability of the proposed updated priority habitat map and the public comment period on the
22 division’s website, in the environmental monitor, in at least 1 newspaper with general

23 circulation, and in other newspapers with regional or local circulation, as deemed appropriate by
24 the division. The division shall further provide such notice to planning boards, building
25 inspectors and conservation commissions in municipalities where existing or new priority
26 habitats have been or are proposed to be delineated or revised.

27 (3) In addition to the public notice and comment procedures in subsections (a) and (b),
28 the division shall, to the extent reasonably practicable, send notice of the public comment period
29 on the updated priority habitat map to the owner of any property proposed to be added as priority
30 habitat. The division shall determine the owner of said property based on assessor records,
31 provided, however, that the failure of the division to notify said property owner shall not affect
32 the validity of the delineation of priority habitat on that property.

33 (4) Following the close of the public comment period, the division shall evaluate the
34 public comments received on its proposed updated priority habitat map, and shall post the final
35 updated priority habitat map, together with a summary response to public comments and a
36 summary explanation of the changes to the priority habitat map, on the division's website.

37 (5) The division shall make available the final updated priority habitat map to the public
38 electronically as a geographic information system data layer, as well as provide the final town-
39 based priority map to planning boards, building inspectors and conservation commissions in all
40 municipalities where priority habitats have been delineated.

41 The division shall thereafter periodically re-evaluate its priority habitat map to determine
42 whether the map should be updated, subject to the procedural requirements in the preceding
43 paragraph. Priority habitat shall be used by the division for the purpose of conducting a screening
44 of a proposed project or activity within priority habitat to determine whether the project or
45 activity will result in the take of an endangered or threatened species or species of special
46 concern. The division's delineation of priority habitat shall be based on the best scientific
47 evidence available and other criteria established in regulation that may include, but is not limited
48 to, an examination of the number, location and age of individual records documenting the
49 occurrence of a state-listed species, and a methodology that draws clear distinctions between the
50 3 different listing classifications of state-listed species based on the relative threat to each species
51 classification.

52 Any future occurrence information submitted to the division of an endangered or
53 threatened species or species of special concern associated with the delineation of new priority
54 habitat added subsequent to December 31, 2013 that is found by a person on the property of
55 another, not including property or interests in property owned by the commonwealth or its
56 subdivisions or subject to the provisions of Article 97, shall be accompanied by a written
57 statement made under the pains and penalties of perjury by the person who obtained the record
58 which certifies that the entry onto the property of another for said purpose was with the
59 permission of the property owner. Nothing in the preceding sentence shall modify or otherwise

60 affect the authority of the division in section 4 of chapter 131 or any other state or local
61 government agency, commission or entity under existing law.

62 The division is authorized to require on-site or off-site mitigation as a condition of its
63 authorization of a take of an endangered or threatened species or species of special concern
64 resulting from a project or activity in priority habitat, provided however, that the scope of
65 mitigation that the division may require for projects or activities that will result in the take of a
66 species of special concern in priority habitat shall be at a value of a 1 to 1 mitigation ratio.

67 The division shall post draft conservation and management permits on its website and
68 accept public comment on said draft permits for a period of 14 calendar days. The division shall
69 further provide electronic notification of the availability of said draft permits on its website to
70 any person who requests such notification in writing to the division.

71 SECTION 3. Pursuant to section 4 of chapter 131A of the General Laws, the division of
72 fisheries and wildlife shall complete a reevaluation of the 2008 priority habitat map on or before
73 December 31, 2013.