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State Endangered Species Act Statutes:

Wisconsin



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Wild Animals and Plants Miscellaneous Provisions § 29.604

Current through Act 186 of the 2019-2020 Legislative Session

§ 29.604. Endangered and threatened species protected

(1) Purpose. The legislature finds that certain wild animals and wild plants are endangered or threatened and are entitled to preservation and protection as a matter of general state concern. The federal endangered species act of 1973 [FN1] and the Lacey act together provide for the protection of wild animals and wild plants threatened with worldwide extinction by prohibiting the importation of endangered or threatened wild animals and wild plants and by restricting and regulating interstate and foreign commerce in wild animals and wild plants taken in violation of state, federal and foreign laws. The states, however, must also assume their responsibility for conserving these wild animals and wild plants and for restricting the taking, possession, transportation, processing or sale of endangered or threatened wild animals and wild plants within their respective jurisdictions to assure their continued survival and propagation for the aesthetic, recreational and scientific purposes of future generations. The legislature finds that by restricting the taking, possession or marketing of endangered species in this state and by establishing a program for conservation and restoration of these endangered or threatened species, their potential for continued existence will be strengthened. The legislature further finds that the activities of both individual persons and governmental agencies are tending to destroy the few remaining whole plant-animal communities in this state. Since these communities represent the only standard against which the effects of change can be measured, their preservation is of highest importance, and the legislature urges all persons and agencies to fully consider all decisions in this light.

(2) Definitions. For purposes of this section:

(a) “Endangered species” means any species whose continued existence as a viable component of this state’s wild animals or wild plants is determined by the department to be in jeopardy on the basis of scientific evidence.

(am) “State agency” means a board, commission, committee, department or office in the state government or the Fox River Navigational System Authority. “State agency” does not include the department of natural resources or the office of the governor.

(b) “Threatened species” means any species of wild animals or wild plants which appears likely, within the foreseeable future, on the basis of scientific evidence to become endangered.

(bn) “Whole plant-animal community” means a group of species living together in a particular area, time and habitat.



(c) Notwithstanding s. 29.001 (90), “wild animal” means any mammal, fish, wild bird, amphibian, reptile, mollusk, crustacean, or arthropod, or any part, products, egg or offspring thereof, or the dead body or parts thereof.

(d) “Wild plant” means any undomesticated species of the plant kingdom occurring in a natural ecosystem.

(3) Endangered and threatened species list.

(a) The department shall by rule establish an endangered and threatened species list. The list shall consist of 3 parts: wild animals and wild plants on the U.S. list of endangered and threatened foreign species; wild animals and wild plants on the U.S. list of endangered and threatened native species; and a list of endangered and threatened Wisconsin species. Wisconsin endangered species shall be compiled by issuing a proposed list of species approaching statewide extirpation. Wisconsin threatened species shall be compiled by issuing a proposed list of species which appear likely, within the foreseeable future, to become endangered. Issuance of the proposed lists shall be followed by solicitation of comments and public hearing. Wild animals and wild plants shall be considered to be approaching statewide extirpation if the department determines, based upon the best scientific and commercial data available to it, after consultation with other state game directors, federal agencies and other interested persons and organizations, that the continued existence of these wild animals and wild plants in this state is in jeopardy.

(b) The department shall periodically review and, following public hearing, may revise its endangered and threatened species list. A summary report of the scientific data used to support all amendments to the state's endangered and threatened species list shall be maintained by the department.

(c) The department may upon the petition of 3 persons review any listed or unlisted wild animal or wild plant if the persons present scientific evidence to warrant such a review, after which the department may by hearing and rule amend the statewide list.

(4) Prohibition. Except as provided in sub. (6r) and (7m) or as permitted by departmental rule or permit:

(a) No person may take, transport, possess, process or sell within this state any wild animal specified by the department's endangered and threatened species list.

(b) No person may process or sell to another person a wild plant of an endangered or threatened species.

(c) No person may do any of the following to any wild plant of an endangered or threatened species that is on public property or on property that he or she does not own or lease, except in the course of forestry or agricultural practices, in the construction, operation, or maintenance of a utility facility, or as part of bulk sampling activities under s. 295.45:

1. Remove, transport or carry away the wild plant from the place where it is growing.
2. Cut, root up, sever, injure or destroy the wild plant.



(5) Enforcement.

(a)1. Whoever violates sub. (4) (a) shall forfeit not less than \$500 nor more than \$2,000. In addition, the court shall order the revocation of all hunting approvals issued to the person under this chapter and shall prohibit the issuance of any new hunting approvals under this chapter for one year. Whoever intentionally violates sub. (4) (a) shall be fined not less than \$2,000 nor more than \$5,000 or imprisoned for not more than 9 months or both. In addition, the court shall order the revocation of all hunting approvals issued to the person under this chapter and shall prohibit the issuance of any new hunting approvals under this chapter for 3 years.

2. Whoever violates sub. (4) (b) or (c) shall forfeit not more than \$1,000. Whoever intentionally violates sub. (4) (b) or (c) shall be fined not more than \$1,000 or imprisoned for not more than 9 months or both.

(b) Any officer employed and authorized by the department, or any police officer of this state or of any municipality or county within this state, shall have the authority to execute a warrant to search for and seize any goods, business records, merchandise or wild animal or wild plant taken, employed, used or possessed in violation of this section. Any such officer or agent may, without a warrant arrest any person whom the officer or agent has probable cause to believe is violating this section in his or her presence or view. An officer or agent who has made an arrest of a person in connection with any violation under this section may search the person or business records at the time of arrest and seize any wild animals and wild plants, records, or property taken, used or employed in connection with any violation.

(c) Goods, merchandise, wild animals, wild plants or records seized under par. (b) shall be held by an officer or agent of the department pending disposition of court proceedings and shall be forfeited to the state for destruction or disposition as the department determines to be appropriate. Prior to forfeiture, the department may direct the transfer of wild animals or wild plants so seized to a qualified zoological, educational or scientific institution or qualified private propagator for safekeeping with costs assessable to the defendant.

(6) Permits.

(a) The department shall issue a permit, under such terms and conditions as it may prescribe by rule, authorizing the taking, exportation, transportation or possession of any wild animal or wild plant on the list of endangered and threatened species for zoological, educational or scientific purposes, for propagation of such wild animals and wild plants in captivity for preservation purposes, unless such exportation, possession, transportation or taking is prohibited by any federal law or regulation, or any other law of this state.

(b) Any endangered species of wild animal or wild plant which enters the state from another state or from a point outside the territorial limits of the United States and which is being transported to a point within or beyond the state may enter the state and be transported without restriction in accordance with the terms of any federal permit or permit issued under the laws or regulations of another state.

(c) Possession, sale or transportation within this state of any endangered species on the U.S. list of endangered and threatened foreign species shall not require a state permit under par. (a).



(6m) Incidental takings; permits.

(a) In this subsection and sub. (6r), “taking” means an activity prohibited under sub. (4)(a), (b) or (c).

(b) The department may issue a permit, under such terms and conditions as it may prescribe, authorizing a taking that otherwise is prohibited by this section if the taking is not for the purpose of, but will be only incidental to, the carrying out of an otherwise lawful activity.

(c) The department may not issue a permit under this subsection unless an applicant for the permit submits to the department a conservation plan and an implementing agreement. The conservation plan shall include all of the following:

1. A description of the impact that will likely occur as a result of the taking of an endangered species or threatened species that is specified on the department's endangered and threatened species list.

2. The steps that the parties specified under par. (d) will take to minimize and mitigate the impact that the endangered species or the threatened species will suffer.

3. A description of the funding that the parties specified under par. (d) will have available to implement the steps specified under subd. 2.

4. A description of the alternative actions to the taking that the parties in par. (d) have considered and the reasons that these alternatives will not be utilized.

5. Any other measures that the department may determine to be necessary or appropriate.

(d) The implementing agreement required under par. (c) shall specifically name, and describe the obligations and responsibilities of, all the parties that will be involved in the taking as authorized by the permit.

(e) Upon receipt of an application for a permit and the accompanying conservation plan and implementing agreement for a proposed taking, the department shall publicize the application by announcing the application receipt and by giving a brief description of the proposed taking. The department publicity shall be distributed to the news media in the vicinity of the proposed taking and to the official state newspaper designated under s. 985.04. The department shall, by rule, establish a list of organizations, including nonprofit conservation groups, that have a professional, scientific or academic interest in endangered species or in threatened species. The department shall give notification of proposed takings under this subsection to these organizations. The department shall establish a procedure for receipt of public comment on the proposed taking.

(f) After having considered the public comment received on the proposed taking, the department shall issue the permit if the department finds, based on the permit application, the conservation plan and the implementing agreement, the taking will meet all of the following requirements:

1. The taking will not be the purpose of, but will be only incidental to, the carrying out of a lawful activity.



2. The parties specified under par. (d) will, to the maximum extent practicable, minimize and mitigate the impact caused by the taking.

3. The parties specified under par. (d) will ensure that adequate funding for the conservation plan will be provided.

4. The taking will not appreciably reduce the likelihood of the survival or recovery of the endangered species or threatened species within the state, the whole plant-animal community of which it is a part or the habitat that is critical to its existence.

5. Any measures required under par. (c)5. will be met.

(g) The department may require that a party specified under par. (d) make additional assurances that the requirements under par. (f)1. to 5. will be met before issuing a permit under par. (f).

(h) The department shall impose on the permit any terms or conditions that the department finds necessary to ensure that the requirements under par. (f)1. to 5. will be met. These terms or conditions may include reporting and monitoring requirements. These terms or conditions are modifiable only as provided under par. (hm).

(hm) The terms or conditions of a permit shall be modified if one of the following applies:

1. The modification is expressly provided in the conservation plan, implementing agreement or permit.

2. The permittee requests the modification.

3. Just cause exists based upon a written finding of necessity by the secretary.

(hr) A finding of necessity under par. (hm)3. by the secretary shall be a final decision not subject to review under subch. III of ch. 227.

(i) The department shall revoke a permit issued under this subsection if it finds that a party specified under par. (d) fails to comply with the terms and conditions of the permit.

(j) A permit issued by the department is not required if a federal permit under 16 USC 1539 has been issued and if the federal fish and wildlife service consulted with the department in the process of determining whether to issue the federal permit.

(k) Paragraphs (b) to (j) do not apply to activities by a state agency or by the department under sub. (6r).

(6r) Agency activities.

(a) A state agency shall notify the department at the earliest opportunity of the location, nature and extent of a proposed activity that the state agency may conduct, approve or fund and



that may affect an endangered species or threatened species. The department may allow the taking of an endangered species or threatened species if all of the following apply:

1. The activity is accomplished in accordance with interagency consultation procedures established by the department and the state agency for the purpose of minimizing any adverse effect on the endangered species or threatened species.
2. The activity is not likely to jeopardize the continued existence and recovery of the endangered species or threatened species, or the whole plant-animal community of which it is a part, within this state and the activity is not likely to result in the destruction or adverse modification of a habitat that is critical to the continued existence of the endangered species or the threatened species within the state, as determined by the department under par. (b).
3. The benefit to public health, safety or welfare justifies the activity.

(b) For purposes of par. (a)2., the department shall determine whether a habitat is critical to the continued existence of an endangered species or threatened species by considering the endangered species' or threatened species' global and state element ranking as defined by the methodology used by the natural heritage inventory program.

(bn) The department may allow an activity by the department itself that results in the taking of an endangered species or threatened species if the activity is accomplished with procedures established by the department for the purpose of minimizing any adverse effect on the endangered species or threatened species and if pars. (a)2. and 3. and (b) apply.

(c) The department shall notify the state agency if the department determines that there is reasonable cause for the department to determine that an activity by the state agency is not being carried out in compliance with this subsection or with any environmental protection requirements developed through interagency consultation procedures. If the secretary of natural resources and the head, as defined in s. 15.01(8), of the state agency are unable to agree upon methods or time schedules to be used to correct the alleged noncompliance, the department may bring any action or initiate any other proceedings to enforce compliance with this subsection.

(d) The department and the state agency shall exchange information and cooperate in the planning and implementation of any activity relating to the taking of any endangered species or threatened species in order to alleviate, to the maximum extent practicable under the circumstances, any potential adverse effect on the endangered species or the threatened species.

(e)1. Except as provided in subd. 2., cooperation between the department and the state agency under par. (d) shall include conducting reasonable surveys and reasonable biological assessments as determined by the department.

2. Subdivision 1. does not apply if the department states in writing that it has data that is sufficient to make a determination that the proposed taking will not reduce the likelihood of the survival or recovery of the endangered species or threatened species within the state, the whole plant-animal community of which it is a part or the habitat that is critical to its existence.



(em)1. Before allowing the taking of an endangered species or threatened species under this subsection, the department shall give notice of the proposed activity to the news media throughout the state and to any person who wants to receive notification of proposed takings under this subsection and who has so informed the department in writing. The department shall transmit the notice at least 30 days before allowing the taking except as provided in subd. 2.

2. If the department determines that it cannot comply with the 30-day time limit in subd. 1., the department shall transmit the notice as far in advance as is practicable before allowing the taking.

(f) In addition to any requirements under s. 1.11, the department may give public notice of and hold public hearings on the activities of state agencies or the department under this subsection.

(7) Conservation.

(a) The department shall conduct research on the endangered and threatened species of this state and shall implement programs directed at conserving, protecting, restoring and propagating selected state-endangered and threatened species to the maximum extent practicable.

(b) The department may enter into agreements with federal agencies, other states, political subdivisions of this state or private persons with respect to programs designed to conserve endangered or threatened species of wild animals or wild plants. Agreements with private persons under this paragraph may include providing for the movement of an endangered or threatened species to another appropriate habitat, preferably to a habitat located on state-owned or state-leased land.

(7m) Bulk sampling activities. A person may take, transport, or possess a wild animal on the department's endangered and threatened species list without a permit under this section if the person avoids and minimizes adverse impacts to the wild animal to the extent practicable, if the taking, transporting, or possession does not result in wounding or killing the wild animal, and if the person takes, transports, or possesses the wild animal for the purpose of bulk sampling activities under s. 295.45.

(8) Exemptions. This section does not apply to zoological societies or municipal zoos, or to their officers or employees.

§ 29.977. Civil actions for damages caused by law violations

(1) The department may bring a civil action in the name of the state for the recovery of damages against any person killing, wounding, catching, taking, trapping or possessing in violation of this chapter any of the following named protected wild animals, birds, or fish, or any part of an animal, bird or fish, and the sum assessed for damages for each wild animal, bird, or fish shall be not less than the amount stated in this section:

(a) Any endangered species protected under s. 29.604, \$875.

(am) Any elk, \$2,000.



- (b) Any moose, fisher, prairie chicken, or sand hill crane, \$262.50.
- (c) Any deer, bear, wild turkey or wild swan, \$175.
- (d) Any bobcat, fox, wolf, beaver, or otter, \$87.50.
- (e) Any coyote, raccoon or mink, \$43.75.
- (f) Any sharp-tailed grouse, ruffed grouse, spruce hen, wild duck, coot, wild goose or brant, \$26.25.
- (g) Any pheasant, gray partridge, quail, rail, Wilson's snipe, woodcock or shore bird, or protected song bird or harmless bird, \$17.50.
- (h) Any muskrat, rabbit or squirrel, \$8.75.
- (i) Any muskellunge or lake sturgeon, \$43.75.
- (j) Any largemouth or smallmouth bass, \$26.25.
- (k) Any brook, rainbow, brown, or steel head trout, \$26.25.
- (L) Any walleye pike, northern pike, or any other game fish not mentioned in pars. (i) to (k), \$8.75.
- (m) Any game or fur-bearing animal or bird not mentioned in pars. (am) to (h), \$17.50.

(2) Any damages recovered in a civil action under this section shall be paid into the conservation fund. The costs of the action, if the judgment is in favor of the defendant, shall be paid out of the conservation fund.

(3) A civil action brought under this section shall be a bar to a criminal prosecution for the same offense and any criminal prosecution for any offense chargeable under this section shall be a bar to a civil action brought under this section.

§ 29.983. Wild animal protection surcharges

(1) Levy of wild animal protection assessment.

(a) If a court imposes a fine or forfeiture for a violation of a provision of this chapter or an order issued under this chapter for the unlawful killing, wounding, catching, taking, trapping, or possession of a wild animal specified in par. (b), or any part of such a wild animal, the court may impose a wild animal protection surcharge under ch. 814 that equals the amount specified for the wild animal under par. (b).

(b) The amount of the wild animal protection surcharge imposed under ch. 814 shall be as follows:



1. For any wild animal that is an endangered species protected under s. 29.604, \$875.
 - 1m. Any elk, \$2,000.
 2. For any moose, fisher, prairie chicken, or sand hill crane, \$262.50.
 3. For any bear, wild turkey or wild swan, \$175.
 4. For any bobcat, fox, wolf, beaver, or otter, \$87.50.
 5. For any deer, coyote, raccoon or mink, \$43.75.
 6. For any sharp-tailed grouse, ruffed grouse, spruce hen, wild duck, coot, wild goose or brant, \$26.25.
 7. For any pheasant, gray partridge, quail, rail, Wilson's snipe, woodcock or shore bird, or protected song bird or harmless bird, \$17.50.
 8. For any muskrat, rabbit or squirrel, \$8.75.
 9. For any muskellunge or lake sturgeon, \$43.75.
 10. For any largemouth or smallmouth bass, \$26.25.
 11. For any brook, rainbow, brown, or steel head trout, \$26.25.
 12. For any walleye pike, northern pike, or any other game fish not mentioned in subds. 9 to 11, \$8.75.
 13. For any game or fur-bearing animal or bird not mentioned in subds. 1m. to 8., \$17.50.
- (d) If a fine or forfeiture is suspended in whole or in part, the wild animal protection surcharge shall be reduced in proportion to the suspension.
- (e) If any deposit is made for an offense to which this section applies, the person making the deposit shall also deposit a sufficient amount to include the wild animal protection surcharge under this section. If the deposit is forfeited, the amount of the wild animal protection surcharge shall be transmitted to the secretary of administration under par. (f). If the deposit is returned, the wild animal protection surcharge shall also be returned.
- (f) The clerk of the court shall collect and transmit to the county treasurer the wild animal protection surcharge and other amounts required under s. 59.40(2)(m). The county treasurer shall then make payment to the secretary of administration as provided in s. 59.25(3)(f)2.
- (2) Deposit of wild animal protection surcharge funds. The secretary of administration shall deposit the moneys collected under this section into the conservation fund.

