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## State Endangered Species Act Statutes:

*Arizona*



This material is based upon work supported by the National Agricultural Library, Agricultural Research Service, U.S. Department of Agriculture

# A National Agricultural Law Center Research Publication

## State Endangered Species Act Statutes: Arizona

### AZ G. and Fish Code §§ 17-268 – 17-298.01, 17-314, 17-401 – 17-407

*Current with legislation from the 54<sup>th</sup> Legislature, 2<sup>nd</sup> Regular session (2020), through chapter 90*

**Title 17. Game and Fish. Chapter 2. Game and Fish Department and Game and Fish Commission. Article IV Fiscal Provision.**

#### **§ 17-268. Game, non-game, fish and endangered species fund**

A. A game, non-game, fish and endangered species fund is established to be used by the commission for game, non-game, fish and endangered species purposes. Monies in the fund are subject to annual legislative appropriation pursuant to § 35-143.

B. Monies received by this state pursuant to § 43-615 shall be deposited, pursuant to §§ 35-146 and 35-147, in the fund.

C. On notice from the commission, the state treasurer shall invest and divest monies in the fund as provided by § 35-313, and notwithstanding § 17-262, monies earned from investment of the game, non-game, fish and endangered species fund shall be credited to the fund.

#### **§ 17-296. Definitions**

In this article:

1. “Public access” means providing entry to publicly held lands for recreational use where such entry is consistent with the provisions establishing those lands.
2. “Sensitive habitat” means the specific areas within the geographical area historically or currently occupied by a species or community of species in which are found those physical or biological features essential to the establishment or continued existence of the species and which may require special management, conservation or protection considerations.
3. “Endangered species” means a species or subspecies of native Arizona wildlife whose population has been reduced due to any cause whatsoever to such levels that it is in imminent danger of elimination from its range in Arizona, or has been eliminated from its range in Arizona.



4. “Threatened species” means a species or subspecies of native Arizona wildlife that, although not presently in imminent danger of being eliminated from its range in Arizona, is likely to become an endangered species in the foreseeable future.

5. “Candidate species” means a species or subspecies of native Arizona wildlife for which habitat or population threats are known or suspected but for which substantial population declines from historic levels have not been documented.

6. “Urban wildlife” means the wildlife that occurs within the limits of an incorporated area or in close proximity to an urban area that receives significant impact from human use.

7. “Environmental education” means educational programs dealing with basic ecological principles and the effects of natural and man related processes on natural and urban systems and programs to enhance public awareness of the importance of safeguarding natural resources.

8. “Habitat evaluation” means the assessment of the status, condition and ecological value of habitat and subsequent recommendations of management, conservation or other protection measures, or mitigation measures, including but not limited to, recommendation of reasonable alternatives for the proposed projects that might otherwise affect the habitat under assessment.

9. “Habitat protection” means the process of protecting the quality, diversity, abundance, and serviceability of habitats for the purposes of maintaining or recovering populations of Arizona wildlife.

#### **§ 17-297. Arizona game and fish commission heritage fund**

A. The Arizona game and fish commission heritage fund is established consisting of monies deposited from the state lottery fund pursuant to section 5-572 and interest earned on those monies.

B. The fund shall be administered by the Arizona game and fish commission and is not subject to appropriation and expenditures from the fund are not subject to outside approval notwithstanding any provision of section 17-241 or 17-261 or any other statutory provision to the contrary. Monies received pursuant to section 5-572 shall be deposited directly with the Arizona game and fish commission heritage fund. On notice from the Arizona state game and fish commission, the state treasurer shall invest and divest monies in the fund as provided by section 35-313, and monies earned from investment shall be credited to the fund.

C. All monies in the Arizona game and fish commission heritage fund shall be spent by the Arizona game and fish commission only for the purposes and in the percentages set forth in this article. In no event shall any monies in the fund revert to the state general fund and monies in the fund are exempt from the provisions of section 35-190 relating to lapsing of appropriations.



D. The commission shall not use its rights of eminent domain to acquire property to be paid for with money from the Arizona game and fish commission heritage fund.

**§ 17-298. Expenditures from fund; purpose and amounts; annual report**

A. Monies received pursuant to § 5-572 shall be spent as follows:

1. Five percent on public access, including maintenance and operation expenses.
2. Sixty percent on the identification, inventory, acquisition, protection and management, including maintenance and operations, of property with sensitive habitat. At least twenty percent of the monies available under this paragraph shall be spent to acquire property with sensitive habitat used by endangered, threatened and candidate species. Not more than twenty percent of the monies available under this paragraph may be spent on the operation and maintenance of the acquired property, including the acquired property's infrastructure. The commission may dispose of any lands acquired for use as habitat by an endangered, threatened or candidate species under this paragraph when the species no longer qualifies as an endangered, threatened or candidate species. The Arizona game and fish commission shall dispose of the land in a manner consistent with the preservation of the species of concern. The disposal may include conservation easements and fee simple transfers with associated instruments of protection. The commission shall follow the guidelines established pursuant to § 37-803 relating to the disposition of real property by a state agency. In addition, disposal shall include a written agreement between the commission and the purchaser requiring the purchaser to incorporate management actions to ensure proper maintenance of the species of concern. Management actions may include maintenance of habitat, selective control of nonnative species, maintenance of genetic viability, monitoring of populations and habitat, coordinating conservation activities, funding conservation actions and assessing conservation progress.
3. Fifteen percent on habitat evaluation or habitat protection.
4. Fifteen percent on urban wildlife and urban wildlife habitat programs.
5. Five percent on environmental education.

B. All monies earned as interest on monies received pursuant to § 5-572 shall be spent only in the percentages and for the purposes described in subsection A of this section or for costs of administering the Arizona game and fish commission heritage fund in such amounts as determined by the Arizona game and fish commission.

C. On or before December 31, the commission shall submit its annual report to the president of the senate, the speaker of the house of representatives and the chairmen of the senate and house of representatives committees on natural resources and agriculture, or their successor committees, and shall provide a copy of this report to the secretary of state. The annual report shall include information on:



1. The amount of monies spent or encumbered in the fund during the preceding fiscal year and a summary of the projects, activities and expenditures relating to:

(a) Property acquisition, operation and maintenance.

(b) Identification, inventory, protection and management of sensitive habitat.

(c) Habitat evaluation and protection.

(d) Urban wildlife.

(e) Environmental education.

(f) Public access.

2. The number and location of parcels of property acquired during the preceding fiscal year.

3. For personal and real properties acquired with fund monies during the preceding fiscal year, the amount of property tax revenue paid to each taxing jurisdiction during the last full tax year prior to acquisition.

4. The amount of money spent from the fund during the preceding fiscal year for employee personal services.

5. The number of full-time employees employed in the preceding fiscal year in connection with property acquisition, including survey, appraisal and other related activities.

6. The total number of full-time employees employed in the preceding fiscal year for the programs listed in subsection A of this section.

7. A list of the grants awarded during the preceding fiscal year, including information on the recipients, purposes and amounts.

#### **§ 17-298.01. Decennial performance audit**

Beginning in 2001 and every tenth succeeding year thereafter, the auditor general shall conduct a performance audit, as defined in § 41-1278, of the programs and expenditures of the Arizona game and fish commission heritage fund pursuant to this article. The auditor general shall submit copies of the performance audit to the president of the senate, the speaker of the house of representatives and the chairmen of the senate and house of representatives committees on natural resources and agriculture, or their successor committees.



**Title 17. Game and Fish. Chapter 3. Taking and Handling of Wildlife. Article 1. General Regulations.**

**§ 17-314. Civil liability for illegally taking or wounding wildlife; recovery of damages**

A. The commission may impose a civil penalty against any person for unlawfully taking, wounding, killing or possessing any of the following wildlife, or part thereof, to recover the following minimum sums:

1. For each turkey or javelina  
\$ 500.00
  
2. For each bear, mountain lion, pronghorn (antelope) or deer  
\$1,500.00
  
3. For each elk or eagle, other than endangered species  
\$2,500.00
  
4. For each predatory, fur-bearing or nongame animal  
\$ 250.00
  
5. For each small game or aquatic wildlife animal



\$ 50.00

6. For each bighorn sheep, bison (buffalo) or endangered species animal

\$8,000.00

B. The commission may bring a civil action in the name of this state to enforce the civil penalty. The civil penalty, or a verdict or judgment to enforce the civil penalty, shall not be less than the sum fixed in this section. The minimum sum that the commission may recover from a person pursuant to this section may be doubled for a second violation, verdict or judgment and tripled for a third violation, verdict or judgment. The action to enforce the civil penalty may be joined with an action for possession and recovery had for the possession as well as the civil penalty.

C. The pendency or determination of an action to enforce the civil penalty or for payment of the civil penalty or a judgment, or the pendency or determination of a criminal prosecution for the same taking, wounding, killing or possession, is not a bar to the other, nor does either affect the right of seizure under any other provision of the laws relating to game and fish.

D. All monies recovered pursuant to this section shall be deposited in the wildlife theft prevention fund established by § 17-315.

#### **§ 17-402. Acceptance of federal aid acts**

A. The state assents to the provisions of Public Law 415, 75th Congress, chapter 899, first session, and Public Law 681, 81st Congress, chapter 658, second session.

B. The commission shall be the agency of the state for the purposes of this article.

#### **§ 17-403. Restoration projects**

The commission may cooperate and enter into agreements with the secretary for establishment, maintenance and completion of restoration projects, pursuant to the restoration acts.

#### **§ 17-404. Acquisition of lands**

The commission, in the name of the state and with approval of the governor, may acquire by purchase, lease or gift, either for cash or upon installments, such lands or other property or interest therein as may be necessary for the purpose of carrying on a restoration project pursuant to an agreement entered into between the commission and the secretary.



### **§ 17-405. Acceptance of grants**

A. The commission shall notify the secretary of its desires to avail itself of monies apportioned not later than sixty days after receipt of certification by the secretary of the estimated amount to be apportioned to this state.

B. Upon receipt of final certification by an agency of the federal government allocating funds to this state for any fiscal year or portion thereof available to the Arizona game and fish department, the commission shall transfer this state's share of the amount so allocated from any monies appropriated by the legislature of this state for the purpose of carrying out wildlife programs and if the monies are insufficient, the commission may transfer from the game and fish fund such sum as it deems advisable to further match the federal apportionments. Monies received from funds of the United States shall be deposited in the federal aid accounts. Claims against the accounts shall be made and paid in the manner provided by law for payment of claims against the game and fish fund.

C. Monies in the federal aid accounts shall be expended solely for work allowable under the provisions of the projects.

### **§ 17-406. Revolving fund; appropriation; purpose and reimbursement**

A. There is established a permanent revolving fund to be known as the game and fish revolving fund.

B. The fund is appropriated for the initial financing or continuation of projects approved in compliance with the provisions of the restoration acts of Congress known as the Pittman-Robertson act and the Dingell-Johnson act<sup>1</sup> and provisions of § 17-402 and other wildlife projects in which the cost may be partially or wholly reimbursed from federal funds.

C. Funds received from the federal government for deposit and appropriated state matching money shall be deposited to the credit of the revolving fund to the extent of expenditures therefrom.

D. This article is exempt from the provisions of § 35-190 relating to lapsing appropriations.

### **§ 17-407. Acquisition of lands by United States for migratory bird conservation**

A. Notwithstanding § 37-620.01, the consent of this state is given pursuant to title 16 United States Code § 715f and article I, § 8, clause 17 of the Constitution of the United States for the acquisition by the United States of land and any buildings and other improvements required for migratory bird conservation purposes.

B. This state shall maintain concurrent civil and criminal jurisdiction over persons on lands acquired by the United States under this section.

