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State Endangered Species Act Statutes:

Maryland



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State Endangered Species Act Statutes: Maryland

Nongame and Endangered Species Conservation Act § 10-2A-01 – 09

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§ 10-2A-01. Definitions

In general

(a) In this subtitle the following words have the meanings indicated.

Conserve

(b)(1) “Conserve” means to use all methods and procedures for the purpose of increasing the number of individuals within species or populations up to the optimum carrying capacity of their habitat and maintaining these levels.

(2) “Conserve” includes all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, and transplantation, including the periodic or total protection of species or populations as well as regulated taking.

(3) With respect to endangered and threatened species, “conserve” means to use all methods and procedures including those described in this subsection which are necessary to bring any endangered or threatened species to the point at which the measures provided for these species pursuant to this subtitle are no longer necessary, except that regulated taking as a method and procedure shall be limited to the extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved.

Ecosystem

(c) “Ecosystem” means a system of living organisms and their environment, each influencing the existence of the other and both necessary for the maintenance of life.

Endangered species

(d)(1) “Endangered species” means any species whose continued existence as a viable component of the State’s wildlife or plants is determined to be in jeopardy.

(2) “Endangered species” includes any species of wildlife or plant determined to be an “endangered species” pursuant to the Endangered Species Act.

Endangered Species Act



(e) “Endangered Species Act” means the Endangered Species Act of 1973, 87 Stat. 884.¹

Incidental taking

(f) “Incidental taking” means the taking of listed species that is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity.

Nongame species

(g) “Nongame species” means any wildlife species not legally classified as game birds or mammals, threatened species, or an endangered species by statute or regulation of the State.

Optimum carrying capacity

(h) “Optimum carrying capacity” means that point at which a given habitat can support healthy populations of wildlife species, having regard to the total ecosystem, without diminishing the ability of the habitat to continue that function.

Plant

(i)(1) “Plant” means any member of the plant kingdom.

(2) “Plant” includes seeds, roots, and other parts of the plant.

Species

(j) “Species” includes any subspecies of wildlife or plant and any other group of wildlife of the same species or smaller taxa in common spatial arrangement that interbreed when mature.

Take

(k) “Take” means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct.

Threatened species

(l) “Threatened species” means any species of wildlife or plants which appears likely, within the foreseeable future, to become endangered including any species of wildlife or plant determined to be a “threatened species” pursuant to the Endangered Species Act.

§ 10-2A-02. Legislative findings

Legislative findings

(a) The General Assembly finds that:

(1) It is the policy of the State to conserve species of wildlife for human enjoyment, for scientific purposes, and to insure their perpetuation as viable components of their ecosystems;

(2) Species of wildlife and plants normally occurring within the State which may be found to be threatened or endangered within the State should be accorded the protection necessary to maintain and enhance their numbers; and



(3) The State should assist in the protection of species of wildlife and plants which are determined to be “threatened” or “endangered” elsewhere pursuant to the Endangered Species Act of 1973, 87 Stat. 884,¹ by prohibiting the taking, possession, transportation, exportation, processing, sale, offer for sale, or shipment within the State of endangered species and by carefully regulating these activities with regard to the threatened species.

Exceptions

(b) Exceptions to the prohibitions in subsection (a) of this section, for the purpose of enhancing the conservation of these species, may be permitted as set forth in this subtitle.

§ 10-2A-03. Powers and duties of Secretary

Investigations, development of conservation programs

(a) The Secretary shall conduct investigations of nongame wildlife in order to develop information relating to population, distribution, habitat needs, limiting factors, and other biological and ecological data to determine conservation measures necessary for their continued ability to sustain themselves successfully. On the basis of these determinations the Secretary shall issue proposed regulations not later than July 1, 1977 and develop conservation programs designed to insure the continued ability of nongame wildlife deemed in need of conservation to perpetuate themselves successfully. The Secretary shall conduct ongoing investigations of nongame wildlife.

Regulations relating to conservation of nongame wildlife

(b) The Secretary, by regulations, shall adopt limitations relating to taking, possession, transportation, exportation, processing, sale or offer for sale, or shipment necessary to conserve nongame wildlife.

Taking, possession, transportation, sale or offer for sale of nongame wildlife prohibited

(c)(1) Except as provided in regulations adopted by the Secretary, a person may not take, possess, transport, export, process, sell, offer for sale, or ship nongame wildlife deemed by the Secretary to be in need of conservation pursuant to this section.

(2) A common or contract carrier may not knowingly transport or receive for shipment nongame wildlife deemed by the Secretary to be in need of conservation pursuant to this section.

§ 10-2A-04. Determination of endangered or threatened status of wildlife or plant

Construction with Endangered Species Act

(a) Any species of wildlife or plant determined to be endangered species pursuant to the Endangered Species Act¹ shall be deemed to be an endangered species under the provisions of this subtitle and any species of wildlife or plant determined to be a threatened species pursuant to the Endangered Species Act shall be deemed to be a threatened species under the provisions of this subtitle. The Secretary may determine, in accordance with this section,



that any threatened species is an endangered species throughout all or any portion of the range of the species within the State.

Factors in determining whether species is endangered or threatened

(b) In addition to the species deemed to be endangered or threatened pursuant to the Endangered Species Act, the Secretary, by regulation, shall determine whether any species of wildlife or plant normally occurring within the State is an endangered or threatened species due to any of the following factors:

- (1) The present or threatened destruction, modification, or curtailment of its habitat or range;
- (2) Overutilization for commercial, sporting, scientific, educational, or other purposes;
- (3) Disease or predation;
- (4) The inadequacy of existing regulatory mechanisms; or
- (5) Other natural or manmade factors affecting its continued existence within the State.

Determinations by Secretary

(c) The Secretary shall make determinations required by subsection (b) of this section on the basis of the best scientific, commercial, and other data available to and after consultation, as appropriate, with federal agencies, other interested State agencies, other states having a common interest in the species, and interested persons and organizations. In determining whether any species of wildlife or plant is an endangered species or a threatened species, the Secretary shall take into consideration any actions being carried out or about to be carried out by the federal government, other states, other agencies of this State, or political subdivisions, or by any other person which may affect the species under consideration.

Addition or removal of species from list

(d) Except with respect to species of wildlife or plants determined to be endangered or threatened species under the provisions of subsection (a) of this section, the Secretary may not add a species to nor remove a species from any list published unless the Secretary first:

- (1) Publishes a public notice of the proposed action;
- (2) Furnishes notice of the proposed action to the Governor of any state sharing a common border with the State and in which the subject species is known to exist; and
- (3) Allows at least 30 days following publication for comment from the public and other interested parties.

Emergency situations

(e) Notwithstanding the provisions of subsection (d) of this section, if the Department determines that an emergency situation exists involving the continued existence of the species as a viable component of the State's wildlife or plants, the Department may add the species to the lists if the Department publishes a public notice that an emergency situation exists together with a summary of facts which support this determination.



Regulations containing list of endangered or threatened species

(f) The Secretary shall adopt regulations containing a list of all species of wildlife and plants normally occurring within the State determined to be endangered species and a list of all species determined to be threatened species. Each list shall refer to the species by scientific and common names and shall specify with respect to each species over what portion of its range it is endangered or threatened.

§ 10-2A-05. Review of threatened or endangered species lists

Construction with Endangered Species Act

(a) Except with respect to species of wildlife or plants determined to be endangered or threatened pursuant to the Endangered Species Act,¹ the Secretary, upon the petition of an interested person, shall conduct a review of any listed or unlisted species proposed to be removed from or added to the lists published pursuant to § 10-2A-04(f) of this subtitle, if the Secretary publishes public notice that the person has presented substantial evidence which warrants a review.

Regulations relating to conservation of species

(b) When any species of wildlife or plant is listed as a threatened species pursuant to § 10-2A-04(f) of this subtitle, the Secretary shall adopt regulations necessary and advisable to provide for the conservation of the species. The Secretary, by regulations, may prohibit with respect to any threatened species of wildlife or plant any act prohibited under subsection (c) of this section.

Prohibited actions relating to endangered wildlife species

(c) Except as provided in subsection (f) of this section and § 10-2A-05.1 of this subtitle, with respect to any endangered species of wildlife, a person may not:

- (1) Export the species from the State;
- (2) Take the species within the State;
- (3) Possess, process, sell or offer for sale, deliver, carry, transport, or ship the species by any means; or
- (4) Violate any regulation pertaining to the conservation of the species or to any threatened species of wildlife listed pursuant to this subsection and adopted by the Secretary pursuant to authority provided by this section.

Prohibited actions relating to endangered plant species

(d) Except as provided in subsection (f) of this section, with respect to any endangered species of plant, a person may not:

- (1) Export the species from the State;
- (2) Possess, process, sell, offer for sale, deliver, carry, transport, or ship the species by any means; or



(3) Violate any regulation pertaining to the species or to any threatened species of plant listed pursuant to § 10-2A-04(f) of this subtitle and adopted by the Secretary.

Federal permits, permits from other states

(e) Any endangered species of wildlife or plant which enters the State from another state or from a point outside the territorial limits of the United States and which is transported to a point within or beyond the State may enter 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.

Actions for scientific purposes or to enhance propagation or survival

(f) The Secretary may permit, under the terms and conditions he prescribes, any act otherwise prohibited by subsections (c) and (d) of this section for scientific purposes or to enhance the propagation or survival of the affected species.

§ 10-2A-05.1. Puritan tiger beetle; incidental takings

Permit to authorize taking

(a) The Secretary shall issue a permit to an applicant that authorizes an incidental taking of the endangered Puritan Tiger Beetle if:

(1) The applicant submits a conservation plan to the Department that specifies:

(i) The impact that will likely result from the incidental taking;

(ii) The steps that the applicant will take to minimize and mitigate the impact, and the funding that will be available to implement the steps;

(iii) The alternative actions to the incidental taking that the applicant considered and the reasons that the alternatives were not used; and

(iv) Any other measures that the Secretary requires as being reasonably necessary or appropriate for the purposes of the plan; and

(2) The Secretary finds that:

(i) The incidental taking will not appreciably reduce the likelihood of the survival or recovery of the Puritan Tiger Beetle in the wild;

(ii) The applicant will, to the extent practicable, minimize and mitigate the impacts of the incidental taking;

(iii) Adequate funding for the conservation plan is available and the plan will be implemented; and

(iv) The applicant has obtained the required federal authorization for the incidental taking of the Puritan Tiger Beetle.

Regulations

(b) The Secretary shall adopt regulations to implement and enforce this section.

§ 10-2A-05.2. Delmarva fox squirrel; incidental takings

Permit to authorize taking



- (a) The Secretary may issue a permit to an applicant that authorizes an incidental taking of the endangered Delmarva fox squirrel if:
- (1) The applicant submits a conservation plan to the Department that specifies:
 - (i) The impact that will likely result from the incidental taking;
 - (ii) The steps that the applicant will take to minimize and mitigate the impact;
 - (iii) The funding that will be available to implement the steps;
 - (iv) The alternative actions to the incidental taking that the applicant considered and the reasons that the alternatives were not used; and
 - (v) Any other measures that the Secretary requires as being necessary or appropriate for the purposes of the plan; and
 - (2) The Secretary finds that:
 - (i) The incidental taking will not appreciably reduce the likelihood of the survival or recovery of the Delmarva fox squirrel in the wild;
 - (ii) The applicant will, to the extent practicable, minimize and mitigate the impacts of the incidental taking;
 - (iii) Adequate funding for the conservation plan is available and the plan will be implemented; and
 - (iv) The applicant has obtained the required federal authorization for the incidental taking of the Delmarva fox squirrel.

Regulations

- (b) The Secretary may adopt regulations to implement and enforce this section.

§ 10-2A-06. Conservation programs for nongame threatened or endangered species

In general

- (a) The Secretary shall establish programs, including acquisition of land or aquatic habitat or interests in the land or aquatic habitats, necessary for the conservation of nongame, threatened, or endangered species of wildlife or plants. The Secretary shall use all vested authority to carry out the provisions of this subsection.

Consultation with Secretary of Agriculture, other states

- (b) In carrying out programs authorized by this section, the Secretary shall consult with the State Secretary of Agriculture and other states having a common interest in particular species of nongame, endangered, or threatened species of wildlife or plants. The Secretary may enter into agreements with federal agencies, other states, political subdivisions of the State, or with individuals with respect to programs designed to conserve nongame, endangered, or threatened species of wildlife or plants, including agreements for administration and management established under this section or utilized for conservation of nongame, endangered, or threatened species of wildlife or plants.

Review of programs by Governor



(c) The Governor shall review other programs administered by the Governor and utilize these programs in furtherance of the purposes of this subtitle. All State departments and agencies, in consultation with and with the assistance of the Secretary, shall utilize their authorities in furtherance of the purposes of this subtitle by carrying out programs for the conservation of endangered species and threatened species listed pursuant to § 10-2A-04(f) of this subtitle, and by taking any action necessary to insure that actions authorized, funded, or carried out by them do not jeopardize the continued existence of the endangered species or threatened species or result in the destruction or modification of habitat of the species which is deemed by the Secretary to be critical.

Regulations

(d) The Secretary shall adopt regulations necessary to implement this section.

§ 10-2A-06.1. Birdwatcher's Fund

Definitions

(a)(1) In this section the following words have the meanings indicated.

(2) "Birdwatcher" means a person who engages in birdwatching.

(3)(i) "Birdwatching" means identifying, studying, and recording the presence of wild birds in their natural surroundings.

(ii) "Birdwatching" does not include incidental sightings of wild birds in their natural surroundings.

Purpose of section

(b) The purpose of this section is to provide a special fund that shall be expended for the preservation of nongame wildlife species and threatened and endangered species.

In general

(c) There is a Birdwatcher's Fund.

Revenue credited to Birdwatcher's Fund, administration

(d)(1) All revenue that the Department derives from the issuance of birdwatcher's stamps and decals shall be credited to the Birdwatcher's Fund.

(2) The Secretary shall administer the Birdwatcher's Fund.

(3) Money in the Birdwatcher's Fund shall be expended only for the preservation of nongame wildlife species and threatened and endangered species.

Birdwatcher's stamp or decal, contributions to Fund

(e)(1) The fee for a birdwatcher's stamp or decal is \$5.

(2) Private contributions, grants and donations may be made to the Birdwatcher's Fund.



(3) Any person engaged in a retail business who desires to sell birdwatcher's stamps and decals as an agent under the Department's control and supervision shall apply on forms prepared and prescribed by the Department.

(4) An agent may retain 25 cents out of the birdwatcher's stamp or decal fee for each birdwatcher's stamp or decal the agent sells.

(5) The Department, by regulation, shall provide procedures and forms for the sale of birdwatcher's stamps and decals.

Purpose of Fund

(f) The purpose of this Fund is:

(1) Dissemination of information pertaining to nongame wildlife species and threatened and endangered species conservation, management, and values;

(2) Scientific investigation and survey of nongame wildlife species and threatened and endangered species for better protection and conservation;

(3) Propagation, distribution, protection, and restoration of nongame wildlife species and threatened and endangered species;

(4) Research and management of nongame wildlife species and threatened and endangered species;

(5) Development of habitats for nongame wildlife species and threatened and endangered species;

(6) Acquisition of habitats for nongame wildlife species and threatened and endangered species; and

(7) Matching of funds available to the Department under federal programs for projects and activities authorized under this section.

§ 10-2A-07. Warrants, searches and seizures; fines and penalties

Fines and penalties

(a) Any person who violates the provisions of § 10-2A-05 of this subtitle, fails to procure any permit required by § 10-2A-05 of this subtitle, or violates the terms of any permit shall be fined not more than \$1,000 or be imprisoned not more than 1 year, or both.

Warrants, searches and seizures, arrests

(b) Any Natural Resources police officer or any law enforcement officer may conduct searches as provided by law, and execute a warrant to search for and seize any equipment, business records, merchandise, wildlife, or plants taken, used, or possessed in connection with a violation of any subsection. Any Natural Resources police officer or law enforcement officer, without a warrant, may arrest any person who the officer has probable cause to believe is violating, in the officer's presence or view, this subtitle or any regulation or permit provided for by this subtitle. Any Natural Resources police officer or law enforcement officer who has made an arrest of a person in connection with any violation may search the person, premises, or business records at the time of arrest and may seize any wildlife, plants, records, or property taken, or used in connection with any violation.



Regulations relating to seizure or forfeiture of equipment, merchandise, wildlife or plants

(c) Equipment, merchandise, wildlife, plants or records seized under the provisions of subsection (b) of this section shall be held by any Natural Resources police officer or law enforcement officer pending disposition of court proceedings, and after disposition of court proceedings shall be forfeited to the State for destruction or disposition as the Secretary may deem appropriate. Prior to forfeiture the Secretary may direct the transfer of wildlife or plants so seized to a qualified zoological, botanical, educational, or scientific institution for safekeeping, costs to be assessable to the defendant. The Secretary may issue regulations to implement this section.

§ 10-2A-08. Wildlife or plants lawfully taken and removed from other states

Importation or entry into State of wildlife or plant

(a) The provisions of this subtitle do not prohibit:

(1) Importation into the State of wildlife or plants which may be lawfully imported into the United States or lawfully taken and removed from another state; or

(2) Entry into this State or the possession, transportation, exportation, processing, sale, offer for sale, or shipment of any wildlife or plant which is designated an endangered or threatened species in this State but not in the state where originally taken, if the person engaging in the activity demonstrates by substantial evidence that the wildlife or plant was lawfully taken and lawfully removed from the state of origin.

Construction with Endangered Species Act

(b) This section does not permit the possession, transportation, exportation, processing, sale, offer for sale or shipment within the State of species of wildlife or plants determined, pursuant to the Endangered Species Act, to be an endangered or threatened species, except as permitted by § 10-2A-05 of this subtitle.

§ 10-2A-09. Short title

This subtitle may be cited as the Nongame and Endangered Species Conservation Act.

