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## State Endangered Species Act Statutes:

*Mississippi*



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# A National Agricultural Law Center Research Publication

## State Endangered Species Act Statutes: Mississippi

### The Nongame and Endangered Species Conservation Act § 49-5-101 – 119

*Current through 2019 Regular Session*

#### **§ 49-5-101. Short title**

Sections 49-5-101 through 49-5-119 shall be known and may be cited as "The Nongame and Endangered Species Conservation Act."

#### **§ 49-5-103. Legislative findings**

The Legislature finds and declares all of the following:

- (a) That it is the policy of the Mississippi Department of Wildlife, Fisheries and Parks to manage certain nongame wildlife for human enjoyment, for scientific purposes, and to insure their perpetuation as members of ecosystems;
- (b) That species or subspecies of wildlife indigenous to this state which may be found to be endangered within the state should be accorded protection in order to maintain and to the extent possible enhance their numbers;
- (c) That the state should assist in the protection of species or subspecies of wildlife which are deemed to be endangered by prohibiting the taking, possession, transportation, exportation, processing, sale or offer for sale or shipment within this state of species or subspecies of wildlife listed on the United States' Lists of Endangered Fish and Wildlife as set forth herein unless such actions will assist in preserving or propagating the species or subspecies; and
- (d) That funding may be made available to the department annually by appropriations from the General Fund or from other sources separate and apart from the Fisheries and Wildlife Fund for management of nongame and endangered species.

#### **§ 49-5-105. Definitions**

The words and phrases when used in Sections 49-5-101 through 49-5-119 shall, for the purposes of such sections, have the meanings respectively ascribed to them in this section, except in those instances where the context clearly indicates a different meaning.

- (a) "Commission" means the Mississippi Commission on Wildlife, Fisheries and Parks.



(b) "Director" means the Executive Director of the Mississippi Department of Wildlife, Fisheries and Parks.

(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.

(d) "Endangered species" means any species or subspecies of wildlife whose prospects of survival or recruitment within the state are in jeopardy or are likely within the foreseeable future to become so, due to any of the following factors: (1) the destruction, drastic modification, or severe curtailment of its habitat, or (2) its over-utilization for scientific, commercial or sporting purposes, or (3) the effect on it of disease, pollution, or predation, or (4) other natural or man-made factors affecting its prospects of survival or recruitment within the state, or (5) any combination of the foregoing factors. The term shall also be deemed to include any species or subspecies of fish and wildlife appearing on the United States' List of Endangered Native Fish and Wildlife as it appears on July 1, 1974, (Part 17 of Title 50 of the Code of Federal Regulations, Appendix D) as well as any species or subspecies of fish and wildlife appearing on the United States' List of Endangered Foreign Fish and Wildlife (Part 17 of Title 50 of the Code of Federal Regulations, Appendix A), as such list may be modified hereafter.

(e) "Management" means the collection and application of biological information for the purposes of increasing the number of individuals within species and populations of wildlife up to the optimum carrying capacity of their habitat and maintaining such levels. The term includes the entire range of activities that constitute a modern scientific resource program including, but not limited to, research, census, law enforcement, habitat acquisition and improvement, and education. Also, included within the term, when and where appropriate, is the periodic or total protection of species or populations as well as regulated taking.

(f) "Nongame species" means any wild mammal, bird, amphibian, reptile, fish, mollusk, crustacean or other wild animal not otherwise legally classified by statute or regulation of this state.

(g) "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.

(h) "Person" means any individual, firm, corporation, association or partnership.

(i) "Take" means to harass, hunt, capture, or kill or attempt to harass, hunt, capture, or kill wildlife.

(j) "Wildlife" means any wild mammal, bird, reptile, amphibian, fish, mollusk, crustacean or other wild animal or any part, product, egg or offspring or the dead body or parts thereof.

#### **§ 49-5-107. Protection of nongame wildlife**

(a) The commission shall conduct investigations on nongame wildlife in order to develop information relating to population, distribution, habitat needs, limiting factors, and other biological and ecological data to determine management measures necessary for their continued ability to sustain themselves successfully. On the basis of such determinations



the commission shall issue proposed regulations and develop management programs, designed to insure the continued ability of nongame wildlife to perpetuate themselves successfully. Such proposed regulations shall set forth species or subspecies of nongame wildlife which the commission deems in need of management pursuant to this section, giving their common and scientific names by species and subspecies. The commission shall conduct ongoing investigations of nongame wildlife and may from time to time amend such regulations by adding or deleting species or subspecies of nongame wildlife.

(b) The commission shall by such regulations establish proposed limitations relating to taking, possession, transportation, exportation, processing, purchasing, sale or offer for sale, or shipment as may be deemed necessary to manage such nongame wildlife. Such regulation shall become effective sixty (60) days after being proposed during which period public comment shall be solicited and received. The commission may hold a public hearing if deemed appropriate. On the basis of public comments received or the testimony at any such hearing the commission may make such changes in the proposed regulation as are consistent with effective management of nongame wildlife.

(c) Except as provided in regulations issued by the commission, it shall be unlawful for any person to take, possess, transport, export, process, purchase, sell or offer for sale or ship nongame wildlife deemed by the commission to be in need of management pursuant to this section. Subject to the same exception, it shall further be unlawful for any common or contract carrier knowingly to transport or receive for shipment nongame wildlife deemed by the commission to be in need of management pursuant to this section.

#### **§ 49-5-109. Protection of endangered species**

(a) On the basis of investigations on nongame wildlife provided for in section 49-5-107 and other available scientific and commercial data, and after consultation with other state wildlife agencies, appropriate federal agencies, and other interested persons and organizations, but not later than one (1) year after July 1, 1974 the commission shall by regulation propose a list of those species and subspecies of wildlife indigenous to the state which are determined to be endangered within this state, giving their common and scientific names by species and subspecies. Such regulation shall become effective sixty (60) days after being proposed during which period public comment shall be solicited and received. The Commission may hold a public hearing if deemed appropriate. On the basis of public comments received or the testimony at any such hearing, the commission may add to such proposed list additional species or subspecies which are determined to be endangered within the state or delete therefrom such species or subspecies which are determined not to be endangered within the state.

(b) The commission shall conduct a review of the state list of endangered species within not more than two (2) years from its effective date and every two (2) years thereafter and may amend the list by such additions or deletions as are deemed appropriate. The commission shall submit to the governor a summary report of the data used in support of all amendments to the state list during the preceding biennium.

(c) Except as otherwise provided in sections 49-5-101 through 49-5-119, it shall be unlawful for any person to take, possess, transport, export, process, sell or offer for sale or ship, and for any common or contract carrier knowingly to transport or receive for



shipment any species or subspecies of wildlife appearing on any of the following lists: (1) the list of wildlife indigenous to the state determined to be endangered within the state pursuant to subsection (a); (2) the United States' List of Endangered Native Fish and Wildlife as it appears on July 1, 1974 (Part 17 of Title 50, Code of Federal Regulations, Appendix D); and (3) the United States' List of Endangered Foreign Fish and Wildlife (Part 17 of Title 50, Code of Federal Regulations, Appendix A), as such list may be modified hereafter; provided, that any species or subspecies of wildlife appearing on any of the foregoing lists which enters the state from another state or from a point outside the territorial limits of the United States and which is transported across the state destined for a point beyond the state may be so entered and transported without restriction in accordance with the terms of any federal permit or permit issued under the laws or regulations of another state.

(d) In the event the United States' List of Endangered Native Fish and Wildlife is modified subsequent to July 1, 1974, by additions or deletions, such modifications whether or not involving species or subspecies indigenous to the state may be accepted as binding under subsection (c) if, after the type of scientific determination described in subsection (a), the commission by regulation accepts such modification for the state. Any such regulation shall be effective upon promulgation.

#### **§ 49-5-111. Programs for management of nongame and endangered wildlife**

(a) The commission shall establish such programs, including acquisition of land or aquatic habitat, as are deemed necessary for management of nongame and endangered wildlife. The commission shall utilize all authority vested in the commission to carry out the purpose of this section.

(b) In carrying out programs authorized by this section, the commission may enter into agreements with federal agencies, political subdivisions of the state, or with private persons for administration and management of any area established under this section or utilized for management of nongame or endangered wildlife.

(c) The governor shall review other programs administered by him and, to the extent practicable, utilize such programs in furtherance of the purposes of this section. The governor shall also encourage other state and federal agencies to utilize their authorities in furtherance of the purposes of this section.

(d) The commission may permit, under such terms and conditions as may be prescribed by regulation, the taking, possession, transportation, exportation or shipment of species or subspecies of wildlife which appear on the state list of endangered species, on the United States' List of Endangered Native Fish and Wildlife, as amended and accepted in accordance with subsection (d) of section 49-5-109, or on the United States' List of Endangered Foreign Fish and Wildlife, as such list may be modified hereafter, for scientific, zoological, or educational purposes, for propagation in captivity of such wildlife, or for other special purposes.

(e) Upon good cause shown, and where necessary to alleviate damage to property or to protect human health, endangered species may be removed, captured or destroyed but only pursuant to permit issued by the commission and, where possible, by or under the supervision of an agent of the commission; provided, that endangered species may be removed, captured or destroyed without permit by any person in emergency situations involving an



immediate threat to human life. Provisions for removal, capture or destruction of nongame wildlife for the purposes set forth above shall be set forth in regulations issued by the commission pursuant to subsection (a) of section 49-5-107.

### **§ 49-5-113. Regulations**

The commission shall issue such regulations as are necessary to carry out the purposes of sections 49-5-101 through 49-5-119. § 49-5-115. Fines, penalties, enforcement, seizures

(a) Any person who violates the provisions of subsection (c) of Section 49-5- 107, or any regulations issued under Section 49-5-107 or whoever fails to procure or violates the terms of any permit issued thereunder shall be guilty of a Class I violation and punished as provided in Section 49-7-141.

(b) Any person who violates the provisions of subsection (c) of Section 49-5- 109, or any regulations issued pursuant thereto or whoever fails to procure or violates the terms of any permit issued under subsections (d) and (e) of Section 49-5-111 shall be fined One Thousand Dollars (\$1,000.00) or be imprisoned not more than one (1) year, or both.

(c) All law enforcement and management officers of the commission and other law enforcement officers authorized to enforce the laws of the State of Mississippi are authorized to carry out the provisions of Sections 49-5-101 through 49-5-119. Any officer or agent may, without warrant, arrest any person who the officer or agent has probable cause to believe is violating, in his presence or view, any section, regulation or permit provided for by Sections 49-5-101 through 49-5-119. An officer or agent who has made an arrest of a person for any such violation may search the person or business records at the time of arrest and seize any wildlife, records, or property taken, or used in connection with the violation.

(d) Equipment, merchandise, wildlife, or records seized under subsection (c) of this section shall be held by an officer or agent of the commission pending disposition of court proceedings, and may be forfeited to the state for destruction or disposition as the commission may deem appropriate. Prior to forfeiture, the commission may direct the transfer of wildlife so seized to a qualified zoological, educational, or scientific institution for safekeeping, costs thereof to be assessable to the defendant. The commission is authorized to issue regulations to implement this subsection.

### **§ 49-5-115. Fines, penalties, enforcement, seizures**

(a) Any person who violates the provisions of subsection (c) of Section 49- 5-107, or any regulations issued under Section 49-5-107 or whoever fails to procure or violates the terms of any permit issued thereunder shall be guilty of a Class I violation and punished as provided in Section 49-7-141.

(b) Any person who violates the provisions of subsection (c) of Section 49- 5-109, or any regulations issued pursuant thereto or whoever fails to procure or violates the terms of any permit issued under subsections (d) and (e) of Section 49-5-111 is guilty of a Class I violation and is punishable as provided under Section 49-7-141.



(c) All law enforcement and management officers of the commission and other law enforcement officers authorized to enforce the laws of the State of Mississippi are authorized to carry out the provisions of Sections 49-5-101 through 49-5-119. Any officer or agent may, without warrant, arrest any person who the officer or agent has probable cause to believe is violating, in his presence or view, any section, regulation or permit provided for by Sections 49-5-101 through 49-5-119. An officer or agent who has made an arrest of a person for any such violation may search the person or business records at the time of arrest and seize any wildlife, records, or property taken, or used in connection with the violation.

(d) Equipment, merchandise, wildlife, or records seized under subsection (c) of this section shall be held by an officer or agent of the commission pending disposition of court proceedings, and may be forfeited to the state for destruction or disposition as the commission may deem appropriate. Prior to forfeiture, the commission may direct the transfer of wildlife so seized to a qualified zoological, educational, or scientific institution for safekeeping, costs thereof to be assessable to the defendant. The commission is authorized to issue regulations to implement this subsection.

#### **§ 49-5-117. Construction**

(a) None of the provisions of sections 49-5-101 through 49-5-119 shall be construed to apply retroactively or to prohibit importation into the state of wildlife which may be lawfully imported into the United States or lawfully taken or removed from another state or to prohibit entry into the state or possession, transportation, exportation, processing, sale or offer for sale or shipment of any wildlife whose species or subspecies is deemed to be threatened with statewide extinction in this state but not in the state where originally taken if the person engaging therein demonstrates by substantial evidence that such wildlife was lawfully taken or removed from such state; provided, that this subsection shall not be construed to permit the possession, transportation, exportation, processing, sale or offer for sale or shipment within this state of wildlife on the United States' List of Endangered Native Fish and Wildlife, as amended and accepted in accordance with subsection (d) of section 49-5-109, except as permitted in the proviso by subsection (c) of section 49-5-109 and subsection (d) of section 49-5-111.

(b) If any provision of sections 49-5-101 through 49-5-119 or the application thereof to any person or circumstance is held invalid, the remainder of such sections, and the application of such provision to other persons or circumstances, shall not be affected thereby.

#### **§ 49-5-119. Program funding**

The cost of programs established under sections 49-5-101 through 49-5-119 shall be borne by any funds or property donated or granted for such purposes by any firm, person, corporation or agency of the U.S. Government and/or from such funds as may be appropriated from time to time by the legislature; provided, further, that such funds as may be donated or granted by any firm, person, corporation or agency of the U.S. Government shall be placed in a separate fund to be known as "the endangered species protection fund" and such funds may be spent by the commission in its discretion as they become available in carrying out the provisions of sections 49-5-101 through 49-5-119. Provided, further, the commission may in its discretion have printed, issue and sell singly or in blocks of five annual editions of not more than five thousand (5,000) endangered species stamps for sale and voluntary purchase as a contribution at



five dollars (\$5.00) each; and funds so derived, less printing costs, shall be deposited in the endangered species fund.

