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## State Endangered Species Act Statutes:

*Montana*



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# A National Agricultural Law Center Research Publication

## State Endangered Species Act Statutes: Montana

### Nongame and Endangered Species Conservation Act § 87-5-101 – 132

*Current through 2019 Regular Session, 66<sup>th</sup> Legislature*

#### **§ 87-5-101. Short title.**

This part shall be known and may be cited as "The Nongame and Endangered Species Conservation Act".

#### **§ 87-5-102. Definitions.**

As used in this part, the following definitions apply:

- (1) "Account" means the nongame wildlife account established in **87-5-121**.(2) "Commercial purposes" means the collection, harvest, possession, or transportation of a species or subspecies of nongame wildlife from the wild with the intent to barter, offer for sale, ship or transport for eventual sale, or sell the animal or any part of the animal.
- (3) "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.
- (4) "Endangered species" means a species or subspecies of wildlife that is actively threatened with extinction due to any of the following factors:
  - (a) the destruction, drastic modification, or severe curtailment of its habitat;
  - (b) its overutilization for scientific, commercial, or sporting purposes;
  - (c) the effect on it of disease, pollution, or predation;
  - (d) other natural or artificial factors affecting its prospects of survival or recruitment within the state; or
  - (e) any combination of the foregoing factors.
- (5) "Management" means the collection and application of biological information for the purposes of conserving populations of wildlife consistent with other uses of land and habitat. 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 improvement, control, and education. The term also includes the periodic protection of species or populations as well as regulated taking.
- (6) "Nongame wildlife" means a wild mammal, bird, amphibian, reptile, fish, mollusk, crustacean, or other wild animal not otherwise legally classified by statute or regulation of



this state. Animals designated by statute or regulation of this state as predatory in nature are not classified as nongame wildlife for purposes of this part.

(7) "Person" means an individual, firm, corporation, association, or partnership.

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

(9) "Wildlife" means a 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 of the animal.

#### **§ 87-5-103. Legislative intent, findings, and policy.**

(1) The legislature, mindful of its constitutional obligations under Article II, section 3, and Article IX of the Montana constitution, has enacted The Nongame and Endangered Species Conservation Act. It is the legislature's intent that the requirements of this part provide adequate remedies for the protection of the environmental life support system from degradation and provide adequate remedies to prevent unreasonable depletion and degradation of natural resources.

(2) The legislature finds and declares all of the following:

(a) that it is the policy of this state to manage certain nongame wildlife for human enjoyment, for scientific purposes, and to ensure their perpetuation as members of ecosystems;

(b) that species or subspecies of wildlife indigenous to this state that may be found to be endangered within the state should be protected 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 that are considered to be endangered elsewhere by prohibiting the taking, possession, transportation, exportation, processing, sale or offer for sale, or shipment within this state of species or subspecies of wildlife unless those actions will assist in preserving or propagating the species or subspecies.

#### **§ 87-5-104. Investigations by department.**

The department 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. The department shall conduct ongoing investigations of nongame wildlife.

#### **§ 87-5-105. Regulations to manage nongame wildlife.**

(1) On the basis of the determinations made pursuant to **87-5-104**, the department shall issue management regulations. The regulations must set forth species or subspecies of nongame wildlife that the department considers to be in need of management pursuant to **87-5-104** through **87-5-106**, giving their common and scientific names by species and subspecies.

(2) The department shall by regulation establish limitations relating to taking, possession, transportation, exportation, processing, sale or offer for sale, or shipment considered necessary to manage nongame wildlife that is designated in need of management.



### § 87-5-106. Unlawful acts.

Except as provided in regulations issued by the department, it shall be unlawful for any person to take, possess, transport, export, sell, or offer for sale nongame wildlife deemed by the department to be in need of management. 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 department to be in need of management.

### § 87-5-107. List of endangered species.

(1) (a) On the basis of investigations on nongame wildlife provided for in **87-5-104** and other available scientific and commercial data and after consultation with other state wildlife agencies, appropriate federal agencies, and other interested persons and organizations, the department shall recommend to the legislature a list of those species and subspecies of wildlife indigenous to the state that are determined to be endangered within this state, giving their common and scientific names by species and subspecies.

(b) The department may propose legislation to specifically include any species or subspecies of fish and wildlife appearing on the United States' list of endangered native fish and wildlife (part 17 of Title 50 of the Code of Federal Regulations, appendix D) as it appears on July 1, 1973, 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 that list may be modified.

(2) (a) The department shall conduct a review of the state list of endangered species every 2 years. The department may propose specific legislation to amend the list by additions that are considered appropriate and at times that are considered appropriate.

(b) Whenever a species or subspecies is removed from the United States' list of endangered native fish and wildlife (part 17 of Title 50 of the Code of Federal Regulations, appendix D) and that species or subspecies is also on the state list of endangered species in ARM 12.5.201, the department shall amend the state list to remove that species or subspecies. The removal of a species or subspecies from the state list pursuant to this subsection (2)(b) does not require approval by the legislature.

(3) Except as otherwise provided in this part, it is unlawful for any person to take, possess, transport, export, sell, or offer for sale 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:

(a) the list of wildlife indigenous to the state determined to be endangered within the state pursuant to subsection (1);

(b) any species or subspecies of fish and wildlife included by the department and appearing on the United States' list of endangered native fish and wildlife (part 17 of Title 50, Code of Federal Regulations, appendix D) as it appears on July 1, 1973; and the United States' list of endangered foreign fish and wildlife (part 17 of Title 50, Code of Federal Regulations, appendix A), as that list may be modified.

(4) Any species or subspecies of fish and wildlife appearing on any of the enumerated lists that is brought into the state from another state or from a point outside the territorial limits of the United States and that is transported across the state destined for a point beyond the



state may be brought into the state and transported without restriction in accordance with the terms of any federal permit or permit issued under the laws or regulations of another state.

(5) If the United States' list of endangered native fish and wildlife is modified by additions, the modifications, whether or not involving species or subspecies indigenous to the state, may be accepted as binding under subsections (3) and (4) if, after the type of scientific determination described in subsection (1), the department proposes and the legislature accepts the modification for the state.

#### **§ 87-5-108. Establishment of programs.**

(1) The director shall establish programs, including acquisition of land or aquatic habitat, that are considered necessary for management of nongame and endangered wildlife. The department shall establish policies that are necessary to carry out the purpose of **87-5-109** and this section.

(2) In carrying out programs authorized by this section, the department 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 **87-5-109** and this section or used for management of nongame or endangered wildlife.

(3) The governor shall review other programs administered by the governor and, to the extent practicable, use those programs in furtherance of the purposes of **87-5-109** and this section. The governor shall also encourage other state and federal agencies to use their authorities in furtherance of the purposes of **87-5-109** and this section.

#### **§ 87-5-109. Taking of species for educational, scientific, or other purposes.**

(1) The director may permit 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 **87-5-107(5)**, 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.

(2) 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 director and, where possible, by or under the supervision of an agent of the department. 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 department pursuant to **87-5-105**.

#### **§ 87-5-110. Department to issue regulations.**

The department shall issue such regulations as are necessary to carry out the purposes of this part.

#### **§ 87-5-111. Enforcement and penalty.**

(1) Any person who violates the provisions of this part or whoever fails to procure or violates the terms of any permit issued thereunder shall be guilty of a misdemeanor.



(2) Upon a first conviction for a violation under this part, the court may fine the defendant not to exceed \$250. Upon a second such conviction, the defendant may be fined not to exceed \$500 or be imprisoned in the county jail for any term not to exceed 30 days, or both. Upon subsequent such convictions, the defendant shall be fined not less than \$500 or more than \$1,000 and in addition may be imprisoned in the county jail for any term not to exceed 6 months.

(3) Any officer employed and authorized by the director or any peace officer of the state or of any municipality or county within the state shall have authority to enforce the provisions of this part.

(4) Wildlife seized under the provisions of this part shall be held by an officer or agent of the department pending disposition of court proceedings and thereafter be forfeited to the state for disposition as the director may deem appropriate. Prior to forfeiture, the director may direct the transfer of wildlife so seized to a qualified zoological, educational, or scientific institution for safekeeping. The department is authorized to issue regulations to implement this subsection.

### **§ 87-5-112. Construction.**

This part may not be construed to apply retroactively or to prohibit importation into the state of wildlife that are 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 determined 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 the wildlife was lawfully taken or removed from the state. However, this section may 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 **87-5-107(5)**, except as permitted in the provision by **87-5-107(3)** and (4) and **87-5-109(1)**.

### **§ 87-5-116. Limited taking of certain nongame wildlife for commercial purposes -- exceptions.**

(1) The following nongame wildlife may not be taken for commercial purposes, except as provided in subsections (3) and (4), without prior authorization of the department, subject to regulations adopted by the department:

- (a) northern flying squirrel (*Glaucomys sabrinus*);
- (b) pika (*Ochotona princeps*);
- (c) pygmy rabbit (*Brachylagus idahoensis*);
- (d) amphibians native to the state of Montana; and
- (e) reptiles native to the state of Montana.

(2) The department may regulate the taking of nongame wildlife for commercial purposes. Regulations may establish limitations related to the taking, possession, transportation, exportation, processing, sale or offer for sale, and shipment of nongame wildlife that are considered necessary to manage nongame wildlife.



(3) The harvest of the prairie rattlesnake (*Crotalus viridis*) for commercial purposes may not be regulated under this section.

(4) This section does not prohibit:

- (a) outfitting for the shooting of nongame wildlife;
- (b) payment by a landowner to an individual for shooting or removing nongame wildlife; or
- (c) the use of byproducts of nongame wildlife in fishing flies, jewelry, or other handicrafts.

**§ 87-5-121. Nongame wildlife account.**

(1) There is a nongame wildlife account in the state special revenue fund provided for in **17-2-102**.

(2) All money collected under **15-30-2387** and all interest earned by the fund before being expended under this section must be deposited in the account.

(3) Money in the account must be used by the department, upon the approval of the commission as determined under **87-5-122**, to provide adequate funding for:

- (a) research and education programs on nongame wildlife in Montana, as provided for in **87-5-104**; and
- (b) any management programs for nongame wildlife approved by the legislature under **87-5-105** as species or subspecies in need of management.

(4) The money is available to the department in the same manner as provided in **87-1-601**, except that money collected under **15-30-2387** may not be used:

- (a) for the purchase of any real property; or
- (b) in such a way as to interfere with the production on or management of private property.

**§ 87-5-122. Duties of commission.**

(1) The commission shall review and approve annually the nongame wildlife programs projects recommended by the department for funding from the nongame wildlife account. The commission shall provide for public comment during the review and approval process.

(2) The commission may adopt rules governing:

- (a) the use of the nongame wildlife account set forth in **87-5-121**; and
- (b) the review and approval process set forth in subsection (1).

**§ 87-5-131. Process for delisting of gray wolf -- management following delisting.**

(1) If the United States fish and wildlife service removes the Northern Rocky Mountain or gray wolf from the United States' list of endangered or threatened wildlife, the department is authorized to remove the wolf from the state list of endangered species upon a determination by the department pursuant to this part that the wolf is no longer endangered.

(2) Following state delisting of the wolf, the department shall manage the wolf as a species in need of management until the department and the commission determine that the wolf no longer needs protection as a species in need of management and can be managed and protected as a game animal. Upon making that determination, the commission may declare



the wolf a big game animal or a furbearer and may regulate the taking of a wolf as a big game animal or furbearer.

(3) (a) Following state delisting of the wolf, the department, or the department of livestock, pursuant to **81-7-102** and **81-7-103**, may control wolves for the protection and safeguarding of livestock if the control action is consistent with a wolf management plan approved by both the department and the department of livestock.

(b) Any wolf management plan approved by the department and the department of livestock must allow the issuance of special kill permits, also known as shoot-on-sight written take authorizations, by the department to landowners or public land permittees who have experienced livestock depredation.

**§ 87-5-132. Use of radio-tracking collars for monitoring wolf packs.**

(1) As part of a wolf management plan approved by the department, a radio-tracking collar or a collar that uses global positioning system technology must be attached to at least one wolf in each wolf pack that is active near livestock or near a population center in areas where depredations are chronic or likely.

(2) The department may expend any state and federal funds received for wolf management purposes and the portion of money allocated from the wolf management account established in **87-1-623** to fulfill the requirements of this section.

(3) The department shall collaborate and cooperate and may enter into agreements with other state and federal agencies, including the United States department of agriculture wildlife services, to fulfill the requirements of this section.

