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State Endangered Species Act Statutes:

New Mexico



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Wildlife Conservation Act § 17-2-37 – 46

Current with all 2020 Legislation

§ 17-2-37. Short title.

Sections 17-2-37 through 17-2-46 NMSA 1978 may be cited as the "Wildlife Conservation Act".

§ 17-2-38. Definitions.

As used in the Wildlife Conservation Act [17-2-37 to 17-2-46 NMSA 1978]:

- A. "commission" means the state game commission;
- B. "director" means the director of the department of game and fish;
- C. "ecosystem" means a system of living organisms and their environment;
- D. "endangered species" means any species of fish or wildlife whose prospects of survival or recruitment within the state are in jeopardy due to any of the following factors:
 - (1) the present or threatened destruction, modification or curtailment of its habitat;
 - (2) overutilization for scientific, commercial or sporting purposes;
 - (3) the effect of disease or predation;
 - (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 may also include any species of fish or wildlife appearing on the United States list of endangered native and foreign fish and wildlife as set forth in Section 4 of the Endangered Species Act of 1973 as endangered species, provided that the commission adopts those lists in whole or in part. The term shall not include any species covered by the provisions of 16 U.S.C. 1331 through 1340 (1971) and shall not include any species of the class insecta determined by the director to constitute a pest whose protection under the Wildlife Conservation Act would present an overwhelming and overriding risk to man;



E. "investigation" means a process pursuant to Subsections B through L of Section 17-2-40 NMSA 1978 undertaken whenever the director suspects that a species may be threatened or endangered and which consists of a formal review of existing data and studies and may include additional field research to determine whether a species is threatened or endangered;

F. "land or aquatic habitat interests" means interests in real property or water rights consisting of fee simple title, easements in perpetuity, time certain easements, long-term leases and short-term leases;

G. "management" means the collection and application of biological information for the purposes of establishing and maintaining a congruous relationship between individuals within species and populations of wildlife and the carrying capacity of their habitat. The term includes the entire range of activities that constitutes a full scientific resource program of, including but not limited to, research, census, law enforcement, propagation, acquisition or maintenance of land or aquatic habitat interests appropriate for recovery of the species, improvement and maintenance, education and related activities or protection and regulated taking;

H. "recovery plan" means a designated program or methodology reasonably expected to lead to restoration and maintenance of a species and its habitat;

I. "peer review panel" means an advisory panel of scientists, each of whom possesses expertise relevant to the proposed investigation and at least one of whom is a wildlife biologist, convened to review the scientific methodology for collection and analysis of data by a researcher based on commonly accepted scientific peer review;

J. "species" means any species or subspecies;

K. "substantial public interest" means a nonfrivolous claim indicated by a broad-based expression of public concern;

L. "take" or "taking" means to harass, hunt, capture or kill any wildlife or attempt to do so;

M. "threatened species" means any species that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range in New Mexico; the term may also include any species of fish or wildlife appearing on the United States list of endangered native and foreign fish and wildlife as set forth in Section 4 of the Endangered Species Act of 1973 as threatened species, provided that the commission adopts the list in whole or in part; and

N. "wildlife" means any nondomestic mammal, bird, reptile, amphibian, fish, mollusk or crustacean or any part, egg or offspring, or the dead body or parts thereof.

§ 17-2-39. Findings and declarations.

The legislature finds and declares that:



A. species of wildlife indigenous to the state that may be found to be threatened or endangered should be managed to maintain and, to the extent possible, enhance their numbers within the carrying capacity of the habitat;

B. the state should assist in the management of species of wildlife that are deemed to be endangered elsewhere by prohibiting the taking, possession, transportation, exportation, processing, sale or offering for sale or shipment within this state of species of wildlife listed on the United States lists of endangered fish and wildlife, unless such actions will assist in preserving or propagating the species;

C. adequate funding should be made available to the department of game and fish by annual appropriations from the general fund or from other sources separate and apart from the game protection fund for management of threatened or endangered species; and

D. because the management and recovery of threatened or endangered species are the responsibility of and a benefit to all of society, the costs of management and recovery should be the responsibility of all sectors of society, and those costs should be minimized and should be borne by federal, state and local governments with contributions from the private sector.

§ 17-2-40. Biennial review; investigations; recommendations of the director; procedures.

A. The director shall conduct a biennial review of all species of wildlife named on the list required by Section 17-2-41 NMSA 1978. The director may conduct investigations at any time of those other species of wildlife indigenous to the state that are suspected of being threatened or endangered in order to develop information relating to population, distribution, habitat needs, limiting factors and other biological and ecological data to determine his recommendations for listing or not listing a species and management measures and requirements necessary for their survival. The director shall also conduct, within a reasonable time, an investigation to support listing or delisting of a species based upon new evidence or, with the advice and consent of the commission, based upon substantial public interest. Upon completion of an investigation or investigations, he shall make written recommendations to the commission to list or not list any unlisted species or to delist any listed species investigated. In conducting any investigation for new listing or delisting required or undertaken pursuant to this subsection, the director shall comply with the procedures established in Subsections B through L of this section. Species listed as threatened or endangered on the state list through adoption of the United States list pursuant to Subsections D and M of Section 17-2-38 NMSA 1978 shall not be subject at the time of adoption to the listing procedures established in Subsections B through K of this section.

B. The director shall select a researcher to conduct an investigation pursuant to Subsection A of this section and request the appointment of a peer review panel composed of one qualified individual from each of the four-year state universities to be appointed by the presidents of the respective universities. The peer review panel shall be requested to submit comments according to a schedule determined by the director. The researcher shall submit his research design to the peer review panel.

C. When additional field research is undertaken as part of an investigation, the peer review panel shall examine the proposed research design for methodology for collection



and analysis of data. Upon receipt of the peer review panel's submitted comments, the researcher shall initiate the field research regarding the designated species.

D. To the extent practicable, as part of his investigation the researcher shall meet and consult with private landowners, lessees and land and resource managers who are or may be affected by or have information pertinent to the investigation.

E. When the researcher initiates his investigation, the director shall:

(1) create a public repository file in which copies of all documents filed with the director pertaining to the investigation or a potential recovery plan, to be developed pursuant to Section 17-2-40.1 NMSA 1978, including all peer review comments, shall be maintained;

(2) mail a notice of the initiation of the investigation to federal and state agencies, local and tribal governments that are or may be affected by the results of the investigation and individuals and organizations that have requested notification of department actions regarding threatened or endangered species;

(3) notify the general public of the initiation of the investigation by information releases to the media in the area of the state affected;

(4) indicate, in all notices and information releases, where and until what date information may be submitted for inclusion in the public repository file;

(5) accept data, views or information about the biological or ecological status of the species for use in both the investigation and the development of the potential recovery plan; and

(6) accept data, views and information on the potential economic or social impacts or opportunities of a change in the legal status of the species for inclusion in the recovery plan.

F. The director shall file all written comments, data, views and information furnished pursuant to Subsection D of this section in the public repository file and shall preserve that file for use in connection with the listing process and development of any recovery plan developed pursuant to the provisions of Section 17-2-40.1NMSA 1978. The director shall file in the public repository file all records indicating contact by the director, the researcher, employees or contractors with land owners or public or private resource managers affected by the potential action.

G. Information from the public repository file relating to social and economic impacts shall not be considered by the director in making his recommendation or the commission in making its decision to list, delist, not list, continue to list, upgrade or downgrade a species, but shall be considered only in the development of any recovery plan for the species.

H. The commission shall adopt, notwithstanding the provisions of Section 14-2-1 NMSA 1978, regulations by January 1, 1996 governing the confidentiality of data from an investigation.

I. The researcher shall prepare and submit draft reports to the peer review panel and to the public repository file. The peer review panel will be requested to examine and comment on the draft report in a timely manner.



J. After consideration of the peer review panel's submitted comments on the draft reports, the researcher shall prepare final reports and file them and all peer review panel comments with the director and in the public repository file. The peer review panel shall not be compelled to attend any hearing before the commission.

K. Upon receipt of the researcher's final reports, the director shall make recommendations to the commission to list, not list or delist the species based upon criteria listed in Subsection L of this section. The commission shall establish dates and locations for public hearings on the recommended actions and give notice of the public hearings in the same manner and to the same persons as notice was given of the initiation of the investigation and, in addition, publish legal notice in a newspaper of general circulation in the area affected at least ninety days before the date set for the hearing. Public hearings shall be held at a place within any quadrant of the state affected by the recommended actions when the director determines that there is substantial public interest indicated in holding a hearing in that quadrant. All hearings on the recommended actions shall be held within six months of the date the director makes his recommendations. The notice shall:

- (1) include the date, time and location of all hearings on the matter;
- (2) include a statement of the recommended action;
- (3) include an indication of the location and availability of the public repository file;
- (4) indicate where and by what date written comments and testimony to be included in the hearing record may be filed;
- (5) indicate that views, data and comments pertaining to the final report may be presented orally at or in writing to the hearing;
- (6) specify that notice of intent to present technical and scientific testimony and a written copy of the testimony to be presented shall be submitted to the commission not less than thirty days prior to the initial hearing; and
- (7) specify that the public record shall remain open for comments for thirty days after the date of the final hearing.

L. The commission shall make its decisions and take action based upon relevant and reliable evidence to list, not list or delist a species at its next regularly scheduled meeting within no more than thirty days after the close of the hearing record. The commission shall:

- (1) list or maintain a species as endangered and shall not delist a species if it finds that the species' prospects for survival or recruitment within the state are in jeopardy based upon the biological and ecological evidence in the public repository file and based upon biological and ecological evidence received in the public hearings; and
- (2) list or maintain a species as threatened and shall not delist a species if it finds that the species' prospects for survival or recruitment within the state are likely within the



foreseeable future to be in jeopardy based upon the biological and ecological evidence in the public repository file and biological and ecological evidence received in public hearings.

M. Whenever the director finds that there is an emergency posing a significant risk to the well-being of any species and that risk is likely to jeopardize the continued survival or recruitment of the species within the state, the director shall recommend to the commission that the species should be listed as endangered. The commission shall act upon the director's recommendation immediately and shall either list or not list the species by regulation based upon the evidence supporting the recommendation if it finds that the continued survival of the species is in jeopardy. If the commission lists the species as endangered, it shall waive the requirements of Subsections A through L of this section. Whenever the commission adopts a regulation listing a species as endangered pursuant to this subsection, it shall give notice of the listing in the same manner and to the same persons as notice is given in the initiation of investigations and in addition shall publish legal notice in a newspaper of general circulation in the area affected. The emergency listing shall cease to have force and effect at the close of a three-year period following the date of the finding unless, during the three year period, the procedures for listing pursuant to Subsections B through L of this section or continuing to list pursuant to commission regulations for the biennial review are completed.

§ 17-2-40.1. Recovery plans; procedures.

A. To the extent practicable, a recovery plan shall be developed pursuant to Subsections B through G of this section for any species listed as threatened or endangered. If indicated, the director shall conduct a social and economic analysis and, if adverse impacts are found, develop a social or economic mitigation plan.

B. To the extent practicable, the director shall develop recovery plans that include several threatened or endangered species that utilize similar habitats or share a common threat or both. A multiple-species recovery plan shall be designed to accomplish recovery of the shared habitat or reduce a common threat or both.

C. As the initial action in the development of a recovery plan, the director shall, within one year of listing, schedule a public information meeting in each of the quadrants of the state determined by the director to be affected by the development of a recovery plan. These meetings shall be held in a manner calculated to provide a reasonable opportunity for individuals and private and public entities to participate and express their views about the development of a recovery plan for one or more species and the attendant adverse social or economic impacts, if any, that may result from implementation of a recovery plan. At these meetings the director shall present background information about the basis of the listing, an explanation of the process to develop a recovery plan and the probable content in general terms, if known, of the recovery plan and if needed, the process to develop a social and economic mitigation plan.

D. Upon completion of the public information meeting or meetings on a recovery plan, the director shall consult and cooperate with other states or countries when appropriate and shall solicit interest from representatives of affected local governments, tribal governments, landowners, state and federal agencies and other interested individuals and organizations to serve on an advisory committee. He shall appoint to the advisory committee all of those who are willing to participate in the development of the recovery plan. When necessary,



he may appoint from the membership of the advisory committee a working group reflecting the diversity of the advisory committee.

E. With the assistance of the advisory committee, the director shall develop a draft recovery plan to achieve the following objectives:

- (1) restoration and maintenance of a viable population of the threatened or endangered species and its habitat reasonably expected to lead to the delisting of the species;
- (2) avoidance or mitigation of adverse social or economic impacts;
- (3) identification of social or economic benefits and opportunities; and
- (4) use of volunteer resources and existing economic recovery and assistance programs and funding available from public and private sources to implement the plan.

F. The director shall mail the draft recovery plan to federal and state agencies, local and tribal governments that are or may be affected by the recovery plan and individuals and organizations that have requested notification of department actions regarding threatened or endangered species.

G. The final recovery plan shall be presented to the commission for its consideration not later than two years from the date the species was listed. If the commission determines that the proposed plan has achieved the objectives set forth in Subsection E of this section, it shall approve the recovery plan or approve with conditions. After approval of the plan, the director shall seek cooperation with other states and countries, when appropriate, and landowners, state and federal agencies and local and tribal governments for implementation of the recovery plan and when appropriate submit the recovery plan to the secretary of the interior for approval pursuant to the federal Endangered Species Act of 1973.

§ 17-2-41. Endangered species.

A. On the basis of investigations concerning wildlife, other available scientific and commercial data and after consultation with wildlife agencies in other states, appropriate federal agencies, local and tribal governments and other interested persons and organizations, the commission shall by regulation develop a list of those species of wildlife indigenous to the state that are determined to be threatened or endangered within the state, giving their common and scientific names by species and subspecies.

B. The director shall conduct a review of the state list of threatened or endangered species and shall present biennially to the commission his recommendations for appropriate action. The commission shall act on the director's biennial recommendations at its next regularly scheduled meeting. The commission shall adopt, no later than January 1, 1996, regulations providing procedures for commission actions on the director's recommendations to continue to list or to upgrade or downgrade a species.



C. Except as otherwise provided in the Wildlife Conservation Act [[17-2-37](#) to [17-2-46](#) NMSA 1978], it is unlawful for any person to take, possess, transport, export, process, sell or offer for sale or ship any species 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 as set forth by regulations of the commission; and

(2) the United States lists of endangered native and foreign fish and wildlife as set forth in Section 4 of the Endangered Species Act of 1973 as endangered or threatened species, but only to the extent that those lists are adopted for this purpose by regulations of the commission; provided that any species of wildlife appearing on any of the lists set forth in this subsection, transported into the state from another state or from a point outside the territorial limits of the United States and which is destined for a point beyond the state, may be transported across the state without restriction in accordance with the terms of any federal permit or permit issued under the laws or regulations of another state or otherwise in accordance with the laws of another state.

D. The provisions of Subsection C of this section shall not apply to a taking of wildlife by a Native American for religious purposes, unless it materially and negatively affects an endangered species or threatened species.

§ 17-2-42. Management programs.

A. The director shall establish such programs, including programs for research and the acquisition of land or aquatic habitat, as authorized and deemed necessary by the commission for the management of endangered species.

B. In carrying out programs authorized by the Wildlife Conservation Act [[17-2-37](#) to [17-2-46](#) NMSA 1978], the director may enter into agreements with federal agencies, political subdivisions of the state or with private persons for administration and management of any program established under this section or utilized for management of endangered species.

C. The director may authorize by permit the taking, possession, transportation, exportation or shipment of species or subspecies which have been deemed by the commission to be in need of management as provided in the Wildlife Conservation Act, so long as such use is for scientific, zoological or educational purposes, for propagation in captivity of such wildlife or to protect private property.

D. Endangered species may be removed, captured or destroyed where necessary to alleviate or prevent damage to property or to protect human health. Such removal, capture or destruction may be carried out only by prior authorization by permit from the director, unless otherwise provided by law; 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 or private property. Regulations governing the removal, capture or destruction of endangered species shall be adopted by the commission within one year after the effective date of the Wildlife Conservation Act.



§ 17-2-43. Commission; power to regulate.

The commission is authorized and directed to establish such regulations as it may deem necessary to carry out all the provisions and purposes of the Wildlife Conservation Act [17-2-37 to 17-2-46 NMSA 1978].

§ 17-2-43.1. Judicial review; administrative actions.

A. Any person adversely affected by an administrative action taken by the commission may appeal to the court of appeals. All appeals shall be upon the record made at the hearing or contained in the public repository file and shall be taken to the court of appeals within thirty days following the date of the action.

B. For appeals of regulations, the date of the action shall be the date of the filing of the regulation by the commission, pursuant to the provisions of the State Rules Act [Chapter 14, Article 4 NMSA 1978].

C. Upon appeal, the court of appeals shall set aside the action only if found to be:

- (1) arbitrary, capricious or an abuse of discretion;
- (2) not supported by substantial evidence in the record; or
- (3) otherwise not in accordance with law.

D. After a hearing and a showing of good cause by the appellant, a stay of the action being appealed may be granted:

- (1) by the commission; or
- (2) by the court of appeals if the commission denies a stay or fails to act upon an application for a stay within sixty days after receipt of the application.

E. The appellant shall pay all costs for any appeal found to be frivolous by the court of appeals.

§ 17-2-44. Director; land or aquatic habitat interest acquisition.

In addition to other powers and duties, the director:

A. may acquire land or aquatic habitat interests for the conservation, management, restoration, propagation and protection of threatened or endangered species; and

B. shall conduct studies to determine the status and requirements for survival of threatened or endangered species.



§ 17-2-45. Penalty.

A. Any person who fails to procure any permit required by Subsection C or D of Section 17-2-42 NMSA 1978 or who fails to abide by the terms of such permit, is guilty of a misdemeanor and upon conviction shall be fined not less than fifty dollars (\$50.00) nor more than three hundred dollars (\$300) or be imprisoned for not more than ninety days, or both.

B. Any person who violates the provisions of Subsection C of Section 17-2-41 NMSA 1978, or any regulations issued pursuant to that section is guilty of a misdemeanor and upon conviction shall be fined one thousand dollars (\$1,000) or imprisoned for a term of not less than thirty days nor more than one year, or both.

§ 17-2-46. Enforcement; powers of conservation officers.

A. The director, each conservation officer, each sheriff in his respective county and each member of the New Mexico state police shall enforce the Wildlife Conservation Act [17-2-37 to 17-2-46 NMSA 1978] and with probable cause shall:

(1) seize any wildlife, including any wild mammal, bird, amphibian, reptile, fish, mollusk or crustacean held in violation of the Wildlife Conservation Act;

(2) arrest any person whom he knows to be guilty of a violation of the Wildlife Conservation Act; and

(3) open, enter and examine all camps, cars, vehicles, tents, packs, boxes, barrels and packages where he has reason to believe any game or fish taken or held in violation of the Wildlife Conservation Act is to be found, and seize it.

B. Any warrant for the arrest of a person shall be issued upon sworn complaint, the same as in other criminal cases, and any search warrant shall issue upon a written showing of probable cause, supported by oath or affirmation, describing the places to be searched or the persons or things to be seized.

C. Conservation officers under the direction of the director may establish checking stations at points along established roads as needed.

