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State Endangered Species Act Statutes:

Tennessee



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Nongame and Endangered or Threatened Species Conservation Act of 1974 §§ 70-8-101 – 70-8-112

Current through 2020 Regular Session

§ 70-8-101. Short title

This part shall be known as the "Tennessee Nongame and Endangered or Threatened Wildlife Species Conservation Act of 1974."

§ 70-8-102. Declaration

The general assembly finds and declares that:

- (1) It is the policy of this state to manage certain nongame wildlife to insure their perpetuation as members of ecosystems, for scientific purposes, and for human enjoyment;
- (2) Species or subspecies of wildlife indigenous to this state which may be found to be endangered or threatened within the state should be accorded protection in order to maintain and, to the extent possible, enhance their numbers;
- (3) The state should assist in the protection of species or subspecies of wildlife which are deemed to be endangered or threatened 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 listed on the United States' List of Endangered Fish and Wildlife as set forth herein unless such actions will assist in preserving or propagating the species or subspecies; and
- (4) Adequate funding should be made available to the agency annually by appropriations from the general fund or from other sources for management of nongame and endangered species.

§ 70-8-103. Definitions

As used in this part unless the context requires otherwise:

- (1) "Agency" means the primary agency within the state that has statutory authority to manage wildlife populations;
- (2) "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;



(3) "Endangered species" means:

(A) 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:

(i) The destruction, drastic modification, or severe curtailment of its habitat;

(ii) Its overutilization for scientific, commercial or sporting purposes;

(iii) The effect on it of disease, pollution, or predation;

(iv) Other natural or man-made factors affecting its prospects of survival or recruitment within the state; or

(v) Any combination of the foregoing factors; or

(B) Any species or subspecies of fish or wildlife appearing on the United States' List of Endangered Native Fish and Wildlife as it appears on April 5, 1974 (Part 17 of Title 50, 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;

(4) "Executive director" means the director of the state agency that has statutory authority to manage wildlife populations;

(5) "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. "Management" 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. "Management" includes, when and where appropriate, is the periodic or total protection of species or populations as well as regulated taking;

(6) "Nongame species" means any wild mammal, bird, amphibian, reptile, fish, mollusk, crustacean or other wildlife not ordinarily taken for sport, fur, food or other commercial use;

(7) "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;

(8) "Person" means any individual, corporation, association or partnership;

(9) "Take" means to harass, hunt, capture, or kill, or to attempt to harass, hunt, capture, or kill wildlife;

(10) "Threatened" means any species or subspecies of wildlife which is likely to become an endangered species within the foreseeable future;



(11) "Watchable wildlife" is any species or subspecies which is defined herein as nongame, endangered, threatened or wildlife in need of management. It further includes any wildlife species or subspecies when their use is nonconsumptive to the extent that such activities are consistent with their legal taking and welfare; and

(12) "Wildlife in need of management" means any species or subspecies of wildlife that needs specific management to prevent it from becoming a threatened species within the state within the foreseeable future.

§ 70-8-104. Nongame species; management programs; rules and regulations

(a) The executive director shall conduct an investigation 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 fish and wildlife commission shall issue proposed regulations not later than April 5, 1975, and develop management programs designed to ensure the continued ability of nongame, endangered or threatened wildlife to perpetuate themselves successfully. Such proposed regulations shall set forth species or subspecies of nongame wildlife that the executive director deems in need of management pursuant to this section, giving their common and scientific names by species or subspecies. The executive director shall conduct ongoing investigations of nongame wildlife and may from time to time recommend amendments to such regulations by adding to or deleting from the regulations species or subspecies of nongame wildlife.

(b) The commission shall by such regulations establish proposed limitations relating to habitat, alteration, taking, possession, transportation, exportation, processing, sale or offer for sale, or shipment as may be deemed necessary to manage such nongame wildlife.

(c) Except as provided in regulations issued by the commission, it is unlawful for any person to take, attempt to take, possess, transport, export, process, sell or offer for sale or ship nongame wildlife. Subject to the same exception, it is also unlawful for any common or contract carrier knowingly to transport or receive for shipment nongame wildlife.

§ 70-8-105. Endangered or threatened species; list; modification

(a) On the basis of investigation on nongame wildlife provided for in § 70-8-104 and other available scientific and commercial data, and after consultation with other state wildlife agencies, appropriate federal agencies, and other interested persons and organizations, but not later than April 5, 1975, the fish and wildlife commission shall by regulation propose a list of those species or subspecies of wildlife indigenous to the state that are determined to be endangered and threatened within this state, giving their common and scientific names by species and subspecies. This list shall be made available to the public.

(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 executive director 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 and shall make a current list available to the public.



(c) In the event the United States' List of Endangered Native Fish and Wildlife is modified subsequent to April 5, 1974, by additions or deletions, such modifications whether or not involving species or subspecies indigenous to the state may be accepted as binding if, after the type of scientific determination described in subsection (a), the fish and wildlife commission by regulation accepts such modification for the state. Any such regulation shall be effective upon promulgation.

§ 70-8-106. Management programs; rules and regulations; exceptions

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

(b) In carrying out programs authorized by this section, the executive director 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 and endangered or threatened wildlife.

(c) The governor shall review other programs administered by the governor 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 executive director 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 or threatened species, on the United States' List of Endangered Native Fish and Wildlife, as amended and accepted in accordance with § 70-8-105(c), 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 species purposes.

(e) Upon good cause shown, and where necessary to alleviate damage to property or to protect human health and safety, endangered or threatened species may be removed, captured or destroyed but only pursuant to a permit issued by the executive director and by or under the supervision of an agent of the agency; provided, that endangered or threatened 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 executive director pursuant to § 70-8- 104(a).

§ 70-8-107. Rules and regulations; authorization

The fish and wildlife commission shall issue such regulations as are necessary to carry out the purposes of this part.

§ 70-8-108. Crimes and offenses; warrantless arrests or searches and seizures



(a) Any person who violates § 70-8-104(c) or any regulations issued under § 70-8-104, or fails to procure or violates the terms of any permit issued thereunder, commits a Class B misdemeanor.

(b) Any person who fails to procure or violates the terms of any permit issued under § 70-8-106(d) and (e) commits a Class A misdemeanor.

(c) Any officer employed and authorized by the executive director or any peace officer of the state or of any municipality or county within the state has the authority to conduct warrantless searches as provided by law, and to execute a warrant to search for and seize any equipment, business records, merchandise or wildlife taken, used, or possessed in connection with a violation of any section of this part. Any such officer or agent may, without a warrant, arrest any person who such officer or agent has probable cause to believe is violating, in the presence or view of the officer or agent, any such section, or any regulation or permit provided for by this part. An officer or agent who has made an arrest of a person in connection with any such violation may search such person or business records at the time of arrest and seize any wildlife, records, or property taken, or used, in connection with any such violation.

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

(e)(1) Notwithstanding subsections (a) and (b), it is not an offense for any person to disturb the habitat of, alter, take, attempt to take, possess, or transport a black vulture, also known by the name *Coragyps atratus*, in this state.

(2) No state funds or personnel, or other state resources, may be used to enforce any prohibition against the disturbance of the habitat of, alteration, taking, attempting to take, possession, or transporting of a black vulture.

(3) Nothing in this subsection (e) prohibits the agency from using state funds or personnel, or other state resources, to assist landowners in acquiring federal depredation permits for black vultures.

§ 70-8-109. Construction of law; importation of wildlife

(a) None of the provisions of this part 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 § 70-8-105(c), except as permitted in § 70-8-106(d). All importations are subject to applicable state laws and regulations.

(b) If any provision of this part or the application thereof to any person or circumstance is held invalid, the remainder of this part, and the application of such provision to other persons or circumstances, shall not be affected thereby. The provisions of this part shall not be construed as superseding any applicable federal statute.

§ 70-8-110. Funding of programs; watchable wildlife endowment fund; cooperative agreement; other states or federal government

(a) The cost of programs established under this part shall be borne by the general fund or other sources. The federal cost share of approved programs pursuant to P.L. 93-205, 87 Stat. 889, § 6(d)(2)(i) and (ii), compiled in 16 U.S.C. § 1535(d)(2)(i) and (ii), for endangered species shall not exceed sixty-six and two thirds percent (66 2/3 %) of the costs stated in the cooperative agreement. The federal share may be increased to seventy-five percent (75%) whenever two (2) or more states having a common interest in one (1) or more endangered or threatened species, the conservation of which may be enhanced by cooperation of such states, enter jointly into an agreement with the executive director.

(b) The executive director is specifically authorized to accept from interested persons, firms, and corporations cash donations or donations of property to be converted to cash pursuant to the terms of the donor to be designated for the nongame and endangered species programs or to be designated for any other programs intended to effectuate the purposes of this part. At the discretion of the donor, cash donations or donations of property to be converted to cash pursuant to the terms of the donor may be made to the watchable wildlife fund. Evidence of the donations shall be by the issuance by the executive director of nongame certificates to the donors.

(c) Watchable wildlife endowment fund.

(1) Recognizing the growing number of nonconsumptive users of wildlife along with their interest and willingness to make donations in support of such programs, there is hereby created a fund called the "watchable wildlife endowment fund" to aid in the future funding of programs designed to perpetually benefit watchable wildlife and to aid in their nonconsumptive use by the public.

(2) Moneys shall be deposited to the fund as provided in this section and shall be invested for the benefit of the fund pursuant to § 9-4-603, § 9-4-608, or § 9-4-612. Moneys in the fund shall not revert to the general fund of the state, but shall remain available and appropriated exclusively for the purposes set forth in this section.

(3) This fund may be funded by donations as provided for in this section.

(4) No expenditure shall be made from the principal of the fund. No expenditures shall be made from the interest earned until the combination of principal and interest reaches five hundred thousand dollars (\$500,000). Thereafter, interest earned shall be available for expenditures to aid in carrying out the purposes of this fund.



(5) This fund is not intended to be the exclusive fund for holding donations authorized in this section and is not intended to affect any presently existing or future funds or means of holding and distributing moneys received through cash donations or through cash received from property donated and converted to cash pursuant to the terms of the donor. It is intended to provide the donor with an additional means of directing the use of the donor's donations.

§ 70-8-111. Cooperative agreement; other states or federal government

The executive director is authorized to enter into cooperative agreements with other states and the federal government for the establishment and maintenance of programs for the conservation of nongame, endangered or threatened species of wildlife.

§ 70-8-112. Species resembling endangered species

The executive director may, by regulation, and to the extent the executive director deems advisable, treat any species as an endangered species or threatened species even though it is not listed if the executive director finds that:

(1) Such species so closely resembles in appearance, at the point in question, a species which has been listed pursuant to such section that enforcement personnel would have substantial difficulty in attempting to differentiate between the listed and unlisted species;

(2) The effect of this substantial difficulty is an additional threat to an endangered or threatened species; and

(3) Such treatment of an unlisted species will substantially facilitate the enforcement and further the policy of this part.

