

TITLE XVIII

FISH AND GAME

CHAPTER 212-A

ENDANGERED SPECIES CONSERVATION ACT

Section 212-A:1

212-A:1 Short Title. – This chapter shall be known and may be cited as "Endangered Species Conservation Act".

Source. 1979, 356:1, eff. Aug. 22, 1979.

Section 212-A:2

212-A:2 Definitions. – In this chapter:

I. "Endangered species act" means the endangered species act of 1973 [P.L. 93-205], 87 Stat. 884, as amended.

II. "Executive director" means the executive director of the fish and game department.

III. "Wildlife" means any member of any nondomesticated species of the animal kingdom, whether reared in captivity or not, including, without exception, any mammal, fish, bird, amphibian, reptile, mollusk, arthropod or other invertebrate, and includes any part, product, egg or offspring thereof, or the dead body or parts thereof.

IV. "Endangered species" means any species of native wildlife whose continued existence as a viable component of the state's wild fauna is determined to be in jeopardy and includes any species of wildlife determined to be an endangered species pursuant to the endangered species act.

V. "Threatened species" means any species of wildlife which appears likely, within the foreseeable future, to become endangered. The term shall also include any species of wildlife determined to be a threatened species under the endangered species act.

Source. 1979, 356:1, eff. Aug. 22, 1979.

Section 212-A:3

212-A:3 Findings and Declarations. – The legislature finds and declares that:

I. Species of wildlife normally occurring within this state which may be found to be in jeopardy should be accorded such protection as is necessary to maintain and enhance their numbers.

II. The state should assist in the protection of species of wildlife which are determined to be threatened or endangered elsewhere pursuant to the endangered species act by prohibiting the taking, possession, transportation or sale of endangered species and by carefully regulating such activities with regard to threatened species. Exceptions to such prohibitions, for the purpose of enhancing the conservation of such species, may be permitted as set forth elsewhere in this chapter.

Source. 1979, 356:1, eff. Aug. 22, 1979.

Section 212-A:4

212-A:4 Adoption of Rules. – All rules which the executive director is authorized to promulgate by this chapter shall be promulgated in accordance with RSA 541-A.

Source. 1979, 356:1, eff. Aug. 22, 1979.

Section 212-A:5

212-A:5 Wildlife Species. –

I. The executive director shall conduct investigations on wildlife species 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 such investigations the executive director, not later than one year after the effective date of this chapter, shall adopt rules and develop conservation programs designed to insure the continued ability of wildlife species deemed in need of conservation to perpetuate themselves successfully. The executive director shall conduct ongoing investigations of endangered and threatened species and may from time to time amend such rules.

II. The executive director shall, by rule, establish such limitations relating to taking, possession, transportation or sale as may be deemed necessary to conserve threatened or endangered species.

III. Except as otherwise provided in rules issued by the executive director, it shall be unlawful:

(a) For any person to take, possess, transport or sell wildlife deemed by the executive director to be in need of conservation pursuant to this section;

(b) For any common or contract carrier knowingly to transport or receive for transport wildlife deemed by the executive director to be in need of conservation pursuant to this section.

IV. The executive director may adopt and enforce rules temporarily restricting boat traffic on any waters of this state as the executive director deems necessary to protect any threatened or endangered species of wildlife in the earliest stages of life.

Source. 1979, 356:1. 1983, 314:3, eff. June 18, 1983. 2011, 224:239, eff. July 1, 2011.

Section 212-A:6

212-A:6 Threatened Species. –

I. Any species of wildlife determined to be an endangered species pursuant to the endangered species act shall be deemed to be an endangered species under this chapter and any species of wildlife determined to be a threatened species pursuant to the endangered species act shall be deemed to be a threatened species under this chapter. The executive director may determine, in accordance with this section, that any species of wildlife determined to be a threatened species under the endangered species act is an endangered species throughout all or any portion of the range of such species within this state.

II. In addition to the species deemed to be endangered or threatened pursuant to the endangered species act, the executive director with his staff may by rule determine whether any species of wildlife normally occurring within the state is an endangered or threatened species because of any of the following factors:

(a) Present or threatened destruction, modification or curtailment of its habitat or range;

(b) Overutilization for commercial, sporting, scientific, educational or other purposes; provided that within 2 years the general court ratifies said action of the executive director when it pertains to a commercial or sporting species. If such ratification does not take place in the first session of the

general court following the listing of such species or within 2 years, whichever comes first, the species shall be removed from the list for a period of 2 years or until the general court ratifies the listing;

(c) Disease or predation; or

(d) Other natural or man-made factors affecting its continued existence within this state;

provided, however, no species shall be determined as endangered or threatened based solely on rarity of the species.

III. The executive director shall make determinations under RSA 212-A:6, II on the basis of the best scientific, commercial and other data available to him 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. Except with respect to species of wildlife determined to be endangered or threatened species under RSA 212-A:6, I, the executive director may not add a species to or remove a species from any list published pursuant to RSA 212-A:6, IV except by rule adopted under RSA 541-A and unless he has first:

(a) Notified the governor of any state sharing a common border with this state and in which the subject species is known to occur that such action is being proposed. In cases where the executive director determines that an emergency situation exists involving the continued existence of such species as a viable component of the state's wildlife he may temporarily add species to the list if he has published a public notice that an emergency situation exists together with a summary of facts which support this determination. The executive director may subsequently make the addition permanent by the adoption of a rule so providing.

(b) Considered those actions, if any, being carried out or about to be carried out by the federal government, by other states, by other agencies of this state or its political subdivisions or by any other person which may affect the species under consideration, in making the determination whether or not any species of wildlife is an endangered or a threatened species.

IV. (a) The executive director shall adopt rules containing a list of all species of wildlife normally occurring within this state which he determines to be an endangered or threatened species. Each list shall refer to the species contained therein by scientific and common name, if any, and shall specify with respect to each such species over what portion of its range it is threatened with extinction.

(b) Except with respect to species of wildlife determined to be endangered or threatened pursuant to the endangered species act, the executive director shall, upon petition of an interested person who presents substantial evidence that warrants a review, conduct a review of any listed or unlisted species proposed to be removed from or added to the lists published pursuant to this paragraph. The executive director shall give public notice of the review.

Source. 1979, 356:1, eff. Aug. 22, 1979.

Section 212-A:7

212-A:7 Prohibited Acts. –

I. With respect to any endangered or threatened species, it is unlawful, except as provided in RSA 212-A:7, II for any person to:

(a) Export any such species from this state;

(b) Take any such species within this state;

(c) Possess, process, sell or offer for sale, deliver, carry, transport or ship, by any means whatsoever, any such species;

(d) Violate any rule adopted under this chapter pertaining to the conservation of such species of wildlife listed pursuant to RSA 212-A:6, IV.

II. The executive director may permit, under such terms and conditions as he may prescribe, any act

otherwise prohibited by this section for scientific purposes or to enhance the propagation or survival of the affected species.

Source. 1979, 356:1, eff. Aug. 22, 1979.

Section 212-A:8

212-A:8 Conflicts; State and Local Laws. – Any law, regulation or ordinance of any political subdivision of this state which applies with respect to the taking, importation, exportation, possession, sale or offer for sale, processing, delivery, carrying, transportation or shipment of species determined to be an endangered species or threatened species is void to the extent that it may effectively:

- I. Permit what is prohibited by this chapter or by any rule adopted under this chapter;
- II. Prohibit what is authorized pursuant to an exemption or permit provided for in this chapter or in any rule adopted under this chapter. This chapter shall not be construed to void any law, regulation or ordinance of any political subdivision of this state which is intended to conserve wildlife or plants.

Source. 1979, 356:1, eff. Aug. 22, 1979.

Section 212-A:9

212-A:9 Conservation Programs. –

I. The executive director shall establish such programs, including acquisition of land or aquatic habitat or interests therein, as are deemed necessary for the conservation of endangered or threatened species. The executive director shall utilize all authority vested in the fish and game department to carry out the purposes of this section.

II. In carrying out programs authorized by this section the executive director shall consult with other states having a common interest in particular threatened or endangered species of wildlife and may enter into agreements with federal agencies, other states, political subdivisions of this state or private persons with respect to programs designed to conserve endangered or threatened species of wildlife including, where appropriate, agreements for administration and management if any are established under this section or utilized for conservation of endangered or threatened species of wildlife.

III. All other state departments and agencies, to the extent possible, consistent with their authorities and responsibilities, shall assist and cooperate with the executive director in the furtherance of the purposes of this chapter for the conservation of endangered or threatened species. They shall take such action as is reasonable and prudent to insure that actions authorized, funded, or carried out by them do not jeopardize the continued existence of such species or result in the destruction or modification of habitat of such species which is determined by the executive director to be critical. The provisions of RSA 212-A or any rule promulgated under this chapter shall not be applicable to a state department or agency when that state department or agency, in the process of undertaking an action, is required by federal law or regulation to address the environmental impact on wildlife or wildlife habitat, of that action.

Source. 1979, 356:1, eff. Aug. 22, 1979.

Section 212-A:10

212-A:10 Penalties. –

- I. Any person who violates the provisions of RSA 212-A:5, III or IV, or any rule adopted in

implementation of either or both, shall be guilty of a violation.

II. Any person who violates the provisions of RSA 212-A:7, I, or any rule issued pursuant to RSA 212-A:6, IV or whoever fails to procure any permit required by RSA 212-A:7, II or violates the terms of any such permit shall be guilty of a misdemeanor.

Source. 1979, 356:1. 1983, 314:4, eff. June 18, 1983.

Section 212-A:11

212-A:11 Disposition of Property. – Equipment, merchandise, wildlife, or records seized in the enforcement of this chapter shall be held by an officer or agent of the fish and game department pending disposition of court proceedings. If the defendant is found guilty such material shall be forfeited to the state for destruction or disposition as the executive director deems appropriate; provided, however, 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 such transfer shall be assessed to the defendant if he is convicted. The executive director is authorized to promulgate rules to implement this section.

Source. 1979, 356:1, eff. Aug. 22, 1979.

Section 212-A:12

212-A:12 Importation. – None of the provisions of this chapter shall be construed to apply retroactively or to prohibit importation into this state of wildlife which may be lawfully imported into the United States or lawfully taken and removed from one state to another or to prohibit entry into this state or the possession, transportation, exportation, processing, sale or offer for sale or shipment of any wildlife which has been determined to be a threatened or endangered species in this state but not in the state where originally taken if the person engaging in such activity demonstrates that such wildlife was lawfully taken and lawfully removed from such state. This section shall not be construed to permit the possession, transportation, exportation, processing, sale or offer for sale or shipment within this state of species of wildlife determined, pursuant to the endangered species act, to be an endangered or threatened species, except as permitted by RSA 212-A:7, II.

Source. 1979, 356:1, eff. Aug. 22, 1979.

Section 212-A:13

212-A:13 Exemptions and Restrictions. –

I. The provisions of RSA 212-A, or any rule promulgated under this chapter, shall not be applicable to marine or estuarine species of wildlife.

II. No rule promulgated under the provisions of this chapter shall cause undue interference with normal agriculture or silvicultural practices.

III. The provisions of RSA 212-A or any rule promulgated under this chapter shall not interfere in any way with the siting or construction of any energy facility as defined in RSA 162-H:2.

Source. 1979, 356:1. 1998, 264:6. 2009, 65:23, eff. Aug. 8, 2009.

Section 212-A:14

212-A:14 Adequate Advance Notice. – The executive director shall publish or disseminate any scientific data to organizations representing farmers and other landowners whose land includes habitat used by any endangered or threatened species, indicating that action is contemplated to preserve said species. This information shall be made available as soon as possible and well in advance of any action taken under this chapter to preserve the endangered or threatened species.

Source. 1979, 356:1, eff. Aug. 22, 1979.

Section 212-A:15

212-A:15 Limitation on Certain Funds. – On the effective date of this chapter with the exception of the expenditures that are then authorized from the fish and game fund, no funds used to carry out the provisions of this chapter shall be derived from license fees of hunters, fishermen, trappers or from taxes on the sale of the equipment to hunters, fishermen or trappers unless the species for which the funds are expended have been legally hunted, fished or trapped within the previous 5-year period.

Source. 1979, 356:1, eff. Aug. 22, 1979.