



SPONSOR: Sen. McDowell & Rep. Heffernan
Sen. Cloutier; Rep. Hudson

DELAWARE STATE SENATE
146th GENERAL ASSEMBLY

SENATE BILL NO. 149

AN ACT TO AMEND TITLE 7 OF THE DELAWARE CODE RELATING TO CONSERVATION AND
ENDANGERED SPECIES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Two-thirds of all members
elected to each house thereof concurring therein):

Section 1. Amend Chapter 6, Title 7, Delaware Code, by deleting Chapter 6, in its entirety, and by substituting in
lieu thereof, a new Chapter 6, to read as follows:

“Chapter 6. Endangered Species.

§601. Findings, policy and purpose.

(a) Findings. The General Assembly hereby makes the following findings concerning threatened and endangered
species of the State:

(1) It is the policy of the State to conserve species or subspecies to insure their perpetuation as viable
components of their ecosystems;

(2) Species or subspecies of wildlife and plants normally occurring within the State which may be found
to be threatened or endangered within the State should be accorded the protection necessary to maintain and
enhance their numbers;

(3) The State should assist in the protection of species or subspecies which are determined to be
‘threatened’ or ‘endangered’ elsewhere by prohibiting the taking, possession, transportation, exportation,
processing, sale, offer for sale, or shipment within the State of endangered species and carefully regulating these
activities with regard to threatened species, including those on any Federal endangered species list.

§602. Definitions.

(a) The following words and phrases shall have the meaning ascribed to them in this chapter unless the context
clearly indicates otherwise:

(1) ‘Department’ means the Department of Natural Resources and Environmental Control.

(2) ‘Secretary’ means the Secretary of the Department of Natural Resources and Environmental Control.

(3) 'Division' means the Division of Fish and Wildlife as a unit of the Department of Natural Resources and Environmental Control.

(4) 'Endangered species' means species or subspecies of all wildlife from the animal or plant kingdom which is in serious danger of becoming extinct throughout all, or a significant portion of its range due to one or more causes, including loss of habitat, change in habitat, overexploitation, predation, competition, or disease.

(5) 'Threatened species' means a species or subspecies of all wildlife from the animal or plant kingdom although not presently threatened with extinction, is likely to become endangered in the foreseeable future in absence of special protection and management efforts.

(6) 'Wildlife' means any member of the animal kingdom that includes any live or dead part including eggs.

(7) 'Plant' means any member of the plant kingdom and includes seeds, roots, or other parts of the plant.

(8) 'Take' means in reference to animals, to harass, harm, pursue, hunt, shoot, hound, kill, trap, capture, collect, process, disrupt the nesting, breeding, feeding or migratory activity or attempt to engage in any such conduct, or to assist such conduct, and in reference to plants, to collect, pick, kill, transplant, cut or process or attempt to engage or to assist in any such conduct.

(9) 'Critical Habitat' means those areas classified by the Department and serving an essential role in the maintenance of sensitive species, including endangered or threatened species.

(10) 'Net Conservation Benefit or Mitigation' means a successful enhancement of the species' subject population or contribution toward recovery of species. To be classified as a net conservation benefit, enhancement or contribution toward recovery must benefit affected listed species to a greater degree than if the applicant's proposed activity were not undertaken.

(11) 'Conserve' means all activities associated with adaptive resources management such as research, inventory, surveys, habitat acquisition and management, propagation, live trapping, marking, outreach and education, and law enforcement, including the periodic or total protection of species or populations as well as regulated taking.

(12) 'Direct take' means willfully or knowingly participating in activities that will result in a take of listed species.

§603. Powers and Duties.

(a) The Secretary of the Department of Natural Resources and Environmental Control (the Secretary) shall designate species that occur within the State as threatened or endangered based on investigations conducted by the

Delaware Division of Fish and Wildlife (the Division), which develop information relating to population, distribution, habitat needs, limiting factors, and other biological and ecological data that will be used to determine conservation measures necessary for their continued ability to sustain themselves successfully.

(b) The Secretary shall adopt such rules and regulations, pursuant to the Administrative Procedures Act, which establish limitations relating to taking, possessing, transporting, exporting, processing, selling, offering for sale or shipping as are deemed necessary by the Secretary to conserve such threatened or endangered species.

(c) The Division as a unit of the Department of Natural Resources and Environmental Control (the Department) shall be the delegated implementation authority for this statute.

§604. Determining endangered or threatened status.

(a) Any species of wildlife or plant naturally occurring within the State determined to be an endangered species pursuant to the listing by the United States Department of the Interior shall be deemed to be an endangered species within the State under the provisions of this subtitle.

(b) Any species determined to be a threatened species pursuant to the United States Department of the Interior shall be deemed to be a threatened species within the State under the provisions of this subtitle.

(c) The Secretary may determine, under advisement of the Division, in accordance with this section, that any threatened species pursuant to the listing by the United States Department of Interior is an endangered species within the State under the provisions of this subtitle.

(d) In addition to the species deemed to be endangered or threatened pursuant to the designation by the United States Department of the Interior, the Secretary under advisement of the Division, by regulation, shall determine whether any species of wildlife or plant normally occurring within the State is an endangered or threatened species. Factors and criteria for determining endangered or threatened status shall be based on biological data including, but not limited to, whether the species is native or has been introduced, reproductive and population status and trends, specialization as determined by unique habitat requirements; restricted distribution, as determined by limited or disjunct geographic range and rarity, as determined by a limited number of occurrences or by occurrence in limited numbers. Vulnerability as determined by threats to the species or its habitats shall also be considered and may include:

- (1) The present or threatened destruction, modification, or curtailment of its habitat or range;
- (2) Overutilization for commercial, sporting, scientific, educational, or other purposes;
- (3) Disease or predation;
- (4) The inadequacy of existing regulatory mechanisms; or
- (5) Other natural or manmade factors affecting its continued existence within the State.

(e) Notwithstanding the provisions the above subsection, if the Department of Natural Resources and Environmental Control (the Department) determines that an emergency situation exists involving the continued existence of the species as a viable component of the State's ecosystem, the Department may add the species to the lists if the Department publishes a public notice that an emergency situation exists together with a summary of facts which support this determination.

(f) The Secretary shall adopt regulations containing a list of all species of wildlife and plants normally occurring within the State determined to be endangered species and a list of all species determined to be threatened species. Each list shall refer to the species by scientific and common names and shall specify with respect to each species over what portion of its range it is endangered or threatened.

(g) Except with respect to species determined to be endangered or threatened pursuant to the designation by the United States Department of Interior, the Secretary, upon petition of an interested person, shall conduct a review of any listed or unlisted species proposed to be removed from or added to the lists published in (f) above, if the Secretary publishes public notice that the person has presented substantial evidence which warrants a review.

(h) Department or prefer delegation to the Division in addition to Division staff at will, shall review whenever deemed necessary and at a minimum every five years the designation of species as endangered or threatened to change from one category to another or remove or add any species from the list of endangered or threatened species as new information is acquired.

§605. Prohibitions.

The direct take of a threatened or endangered species as designated under the provisions of this subsection within the State shall be prohibited.

(a) Importation of endangered species or hides, parts or articles made therefrom.

(1) Notwithstanding any other provision of this title, the importation, transportation, possession, collection, or sale of any endangered species of fish or wildlife, or hides or other parts thereof, or the sale or possession with intent to sell any article made in whole or in part from the skin, hide or other parts of any endangered species of fish or wildlife is prohibited, except under license or permit from the Division of Fish and Wildlife. For the purposes of this section, endangered species shall mean those species of fish and wildlife designated by the Division of Fish and Wildlife as seriously threatened with extinction. Such a list shall in any event include, but not be limited to, endangered species as so designated by the Secretary of the Interior. The Division of Fish and Wildlife may authorize under the terms as conditions as prescribed by regulation, the taking, transportation, exportation, intra-state importation, or shipment of listed species for scientific, zoological, or

educational purposes, for propagation in captivity for conservation purposes of such wildlife, or for other special purposes.

(b) Sale of skins, bodies or animals of certain species prohibited.

(1) It shall be unlawful for any person or entity to sell or possess any part of the skin or body, whether raw or manufactured, or the species itself as prohibited by the Convention on International Trade in Endangered Species (CITES) within the State.

§606. Conservation Programs.

(a) The Secretary shall establish a framework for the creation and implementation of conservation programs, including acquisition of land or aquatic habitat or interests in the land or aquatic habitats and conservation agreements, necessary for the conservation of threatened or endangered species of wildlife or plants. The Secretary shall use all vested authority to carry out the provisions of this subsection with the exception that the secretary shall not utilize the power of eminent domain.

(b) The Secretary may establish a separate fund from these contributions from the Federal Government, or any county or municipal government or from private sources for the purposes of this act for the support of threatened or endangered species program.

(c) In implementing a conservation plan under this section, the Department shall not adopt any rule that restricts the use or development of private property. If a conservation plan identifies a conservation, protection, or restoration measure the implementation of which is beyond the scope of the authority of the Department, the Department may petition the General Assembly, any agency that has regulatory authority to implement the measure, a unit of local government, or any other public or private entity and request the assistance of that agency or entity in implementing the measure.

§607. Enforcement.

Any officer or agent authorized by the Secretary of the Department of Natural Resources and Environmental Control or any officer or agent authorized by the Director of the Division of Fish and Wildlife, or any police officer of the State, or any police officer of any municipality within the State, has authority to execute any warrant in search for and seizure of any goods, merchandise or wildlife sold or offered for sale in violation of this chapter, or any property or item used in connection with a violation of this chapter; such goods, merchandise, wildlife or property shall be held pending proceedings in any court of proper jurisdiction. Upon conviction, such seized goods, merchandise or wildlife shall be forfeited and, upon forfeiture, either offered to a recognized institution for scientific or educational purposes, or destroyed.

§608. Penalty.

Whoever violates this chapter shall be guilty of a Class A environmental misdemeanor for each offense.

§609. Exemptions.

(a) A person may possess or propagate all plants listed as endangered or threatened by the State, provided the sources for propagation or possession may not be taken from the wild. All nursery trade may be conducted provided the sources for such transactions shall not be taken from the wild.

(b) Mosquito control activities, authorized by the Department shall be exempt from permit requirements.

(c) The Brandywine Zoo and other state permitted wildlife rehabilitation organizations are not subject to the permitting provisions of this Statute.

(d) Public health declarations, orders, and regulations of the department of health shall be exempt from permit requirements.

(e) The Department may adopt regulations for additional exemptions not listed in this section.

§610. Disclosures.

Notwithstanding the provisions of the Freedom of Information Act, Title 29, Chapter 100 of the Delaware Code, the Secretary may withhold from disclosure to any person maps and records that disclose the location of any essential habitat or that disclose the location of any endangered or threatened species, upon determination that disclosure of such information to such person would create an unacceptable risk of destruction of, or harm to, such habitat or species. Prior to disclosure of any maps or records to any person, the Secretary may impose any reasonable conditions including the condition that the person to whom the information is disclosed furnish the Secretary with security in an amount and kind sufficient to guarantee that such person shall not destroy or harm, or cause to be destroyed or harmed, any such habitat or species. Any person whose request for disclosure has been denied shall be afforded the opportunity for a hearing to establish that (1) the requested information should be disclosed because disclosure would not create an unacceptable risk of destruction of, or harm to, such habitat or species and (2) the unreasonableness of any condition imposed, including the amount or kind of any security to be established.”

§611. Permits for importation of certain fish or wildlife.

The Director of the Division of Fish and Wildlife may permit, under such terms and conditions as he or she may prescribe, the take or importation of any species or subspecies of fish or wildlife listed in this chapter for zoological, educational, and scientific purposes and for the propagation of such fish or wildlife in captivity for the preservation of a species, unless such importation is prohibited by any federal law or regulation.”

SYNOPSIS

This bill updates Title 7 Conservation, Chapter 6 Endangered Species relating to the conservation and endangered species. This bill models the policies of neighboring states (i.e. Maryland and New Jersey).

Provisions in this bill define the powers and duties of listing and delisting of threatened and endangered species, rules and regulations, and implementation authority (DNREC). The Secretary of DNREC is given statutory authority to designate threatened or endangered species based on scientific investigations by the Delaware Division of Fish and Wildlife and can establish rules and regulations necessary for the conservation of those species and the continued ability for those species to sustain themselves. The bill inserts qualifications of endangered and threatened statuses. Provisions in this bill allow for public notice of species listing and criterion for review of status and delisting of species. The statute on the potential for permits is amended to include instances of take. This bill prohibits the take of threatened or endangered species. The importation of hides, parts, or articles made from endangered or threatened species and the sale of skins, bodies, or animals of endangered and threatened species continue to be prohibited.

The bill allows for the establishment of a framework to create and implement conservation programs including the acquisition of land or aquatic habitats and conservation agreements needed to conserve threatened or endangered species of plants and wildlife. In implementing these conservation programs, the DNREC shall not restrict the use or development of private property. The bill also ensures that the disclosure of property maps and locations of essential habitat of any endangered or threatened species may be withheld if the disclosure of such information would create an unacceptable risk of destruction or harm to species or habitat.

Author: Senator McDowell