

The Nebraska Nongame and Endangered Species Conservation Act (NESCA)

NEBRASKA REVISED STATUTES OF 1943. CHAPTER 37. GAME AND PARKS ARTICLE 8. NONGAME AND ENDANGERED SPECIES CONSERVATION ACT.

§ 37-801. Act, how cited.

Sections 37-801 to 37-811 shall be known and may be cited as the Nongame and Endangered Species Conservation Act.

Source: Laws 1975, LB 145, § 1; Laws 1984, LB 466, § 1; R.S.1943, (1993), § 37-430; Laws 1998, LB 922, § 351.

§ 37-802. Terms, defined.

For purposes of the Nongame and Endangered Species Conservation Act, unless the context otherwise requires, the definitions found in sections 37-203 to 37-236, 37-238, 37-239, 37-241, and 37-243 to 37-247 and the following definitions are used:

- (1) Endangered species means any species of wildlife or wild plants whose continued existence as a viable component of the wild fauna or flora of the state is determined to be in jeopardy or any species of wildlife or wild plants which meets the criteria of the Endangered Species Act;
- (2) Extirpated species means any species of wildlife or wild plants which no longer exists or is found in Nebraska;
- (3) Nongame species means any species of mollusks, crustaceans, or vertebrate wildlife not legally classified as game bird, game animal, game fish, fur-bearing animal, threatened species, or endangered species by statute or regulation of this state;
- (4) Person means an individual, corporation, partnership, limited liability company, trust, association, or other private entity or any officer, employee, agent, department, or instrumentality of the federal government, any state or political subdivision thereof, or any foreign government;
- (5) Species means any subspecies of wildlife or wild plants and any other group of wildlife of the same species or smaller taxa in common spatial arrangement that interbreed when mature;
- (6) Take means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect or attempt to engage in any such conduct; and
- (7) Threatened species means any species of wild fauna or flora which appears likely to become endangered, either by determination of the commission or by criteria provided by the Endangered Species Act.

Source: Laws 1975, LB 145, § 2; Laws 1984, LB 466, § 3; Laws 1987, LB 150, § 2; Laws 1993, LB 121, § 202; R.S.1943, (1993), § 37-431; Laws 1998, LB 922, § 352.

§ 37-803. Legislative intent.

The Legislature finds and declares:

- (1) That it is the policy of this state to conserve species of wildlife for human enjoyment, for scientific purposes, and to insure their perpetuation as viable components of their ecosystems;
- (2) That species of wildlife and wild plants normally occurring within this state which may be found to be threatened or endangered within this state shall be accorded such protection as is necessary to maintain and enhance their numbers;

(3) That this state shall assist in the protection of species of wildlife and wild plants which are determined to be threatened or endangered elsewhere pursuant to the Endangered Species Act by prohibiting the taking, possession, transportation, exportation from this state, processing, sale or offer for sale, or shipment within this state of such endangered species and by carefully regulating such activities with regard to such threatened species. Exceptions to such prohibitions, for the purpose of enhancing the conservation of such species, may be permitted as set forth in the Nongame and Endangered Species Conservation Act; and

(4) That any funding for the conservation of nongame, threatened, and endangered species shall be made available to the commission from General Fund appropriations, the Wildlife Conservation Fund, or other sources of revenue not deposited in the State Game Fund.

Source: Laws 1975, LB 145, § 3; Laws 1984, LB 466, § 4; R.S.1943, (1993), § 37-432; Laws 1998, LB 922, § 353; Laws 2007, LB299, § 17. Effective date September 1, 2007.

§ 37-804. Legislative declarations.

The Legislature hereby declares that nongame, threatened, and endangered species have need of special protection and that it is in the public interest to preserve, protect, perpetuate, and enhance such species of this state through preservation of a satisfactory environment and an ecological balance. The purpose of section 37-811 and section 77-27,119.01 is to provide a means by which such protection may be financed through a voluntary checkoff designation on state income tax return forms. The intent of the Legislature is that the program of income tax checkoff is supplemental to any funding and in no way is intended to take the place of the funding that would otherwise be appropriated for such purpose.

Source: Laws 1984, LB 466, § 2; Laws 1989, LB 258, § 1; R.S.1943, (1993), § 37-432.01; Laws 1998, LB 922, § 354.

§ 37-805. Commission; develop conservation programs; unlawful acts.

(1) The commission shall conduct investigations of nongame wildlife in order to develop information relating to population, distribution, habitat needs, limiting factors, and other biological and ecological data to determine conservation measures necessary to enable such nongame wildlife to sustain itself successfully. On the basis of such determinations the commission shall develop a list of nongame wildlife in need of conservation, issue proposed regulations not later than two years from August 24, 1975, and develop conservation programs designed to insure the continued ability of nongame wildlife in need of conservation to perpetuate itself successfully. The commission shall conduct continuing investigations of nongame wildlife.

(2) The commission shall establish such proposed limitations relating to the taking, possession, transportation, exportation from this state, processing, sale or offer for sale, or shipment as may be necessary to conserve such nongame wildlife.

(3) Except as provided in regulations issued by the commission, it shall be unlawful for any person to take, possess, transport, export, process, sell or offer for sale, or ship nongame wildlife in need of conservation pursuant to this section. Subject to the same exception, it shall further be unlawful for any person, other than a common or contract motor carrier under the jurisdiction of the Public Service Commission or the Interstate Commerce Commission knowingly to transport, ship, or receive for shipment nongame wildlife in need of conservation pursuant to this section.

Source: Laws 1975, LB 145, § 4; R.S.1943, (1993), § 37-433; Laws 1998, LB 922, § 355.

§ 37-806. Endangered or threatened species; how determined; commission; powers and duties; unlawful acts; exceptions; local law, regulation, or ordinance; effect.

(1) Any species of wildlife or wild plants determined to be an endangered species pursuant to the Endangered Species Act shall be an endangered species under the Nongame and Endangered Species Conservation Act, and any species of wildlife or wild plants determined to be a threatened species pursuant to the Endangered Species Act shall be a threatened species under the Nongame and Endangered Species Conservation Act. The commission may determine that any such threatened species is an endangered species throughout all or any portion of the range of such species within this state.

(2) In addition to the species determined to be endangered or threatened pursuant to the Endangered Species Act, the commission shall by regulation determine whether any species of wildlife or wild plants normally occurring within this state is an endangered or threatened species as a result of any of the following factors:

- (a) The present or threatened destruction, modification, or curtailment of its habitat or range;
- (b) Overutilization for commercial, sporting, scientific, educational, or other purposes;
- (c) Disease or predation;
- (d) The inadequacy of existing regulatory mechanisms; or
- (e) Other natural or manmade factors affecting its continued existence within this state.

(3) The commission shall make determinations required by subsection (2) of this section on the basis of the best scientific, commercial, and other data available to the commission. Except with respect to species of wildlife or wild plants determined to be endangered or threatened species under subsection (1) of this section, the commission may not add a species to nor remove a species from any list published pursuant to subsection (5) of this section unless the commission has first:

- (a) Published a public notice of such proposed action;
 - (b) Notified the Governor of any state sharing a common border with this state, in which the subject species is known to occur, that such action is being proposed; and
 - (c) Allowed at least thirty days following publication for comment from the public and other interested parties. In cases when the commission determines that an emergency situation exists involving the continued existence of such species as a viable component of the wild fauna or flora of the state, the commission may add species to such lists after having first published a public notice that such an emergency situation exists together with a summary of facts which support such determination.
- (4) In determining whether any species of wildlife or wild plants is an endangered or threatened species, the commission shall take into consideration those actions being carried out by the federal government, by other states, by other agencies of this state or political subdivisions thereof, or by any other person which may affect the species under consideration.
- (5) The commission shall issue regulations containing a list of all species of wildlife and wild plants normally occurring within this state which it determines, in accordance with subsections (1) through (4) of this section, to be endangered or threatened species and a list of all such species. Each list shall refer to the species contained therein by scientific and common name or names, if any, and shall specify with respect to each such species over what portion of its range it is endangered or threatened.

(6) Except with respect to species of wildlife or wild plants determined to be endangered or threatened pursuant to the Endangered Species Act, the commission shall, upon the petition of an interested person, conduct a review of any listed or unlisted species proposed to be removed from or added to the lists published pursuant to subsection (5) of this section, but only if the commission publishes a public notice that such person has presented substantial evidence which warrants such a review.

(7) Whenever any species of wildlife or wild plants is listed as a threatened species pursuant to subsection (5) of this section, the commission shall issue such regulations as are necessary to provide for the conservation of such species. The commission may prohibit, with respect to any threatened species of wildlife or wild plants, any act prohibited under subsection (8) or (9) of this section.

(8) With respect to any endangered species of wildlife, it shall be unlawful, except as provided in subsection (7) of this section, for any person subject to the jurisdiction of this state 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 except as a common or contract motor carrier under the jurisdiction of the Public Service Commission or the Interstate Commerce Commission, any such species; or

(d) Violate any regulation pertaining to the conservation of such species or to any threatened species of wildlife listed pursuant to this section and promulgated by the commission pursuant to the Nongame and Endangered Species Conservation Act.

(9) With respect to any endangered species of wild plants, it shall be unlawful, except as provided in subsection (7) of this section, for any person subject to the jurisdiction of this state to:

(a) Export any such species from this state;

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

(c) Violate any regulation pertaining to such species or to any threatened species of wild plants listed pursuant to this section and promulgated by the commission pursuant to the act.

(10) Any endangered species of wildlife or wild plants which enters this state from another state or from a point outside the territorial limits of the United States and which is being transported to a point within or beyond this state may be so entered and transported without restriction in accordance with the terms of any federal permit or permit issued under the laws or regulations of another state.

(11) The commission may permit any act otherwise prohibited by subsection (8) of this section for scientific purposes or to enhance the propagation or survival of the affected species.

(12) 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 other than under the jurisdiction of the Public Service Commission, or shipment of species determined to be endangered or threatened species pursuant to the Nongame and Endangered Species Conservation Act shall be void to the extent that it may effectively

(a) permit that which is prohibited by the act or by any regulation which implements the act or

(b) prohibit that which is authorized pursuant to an exemption or permit provided for in the act or in any regulation which implements the act. The Nongame and Endangered Species Conservation Act shall not otherwise be construed to void any law, regulation, or ordinance of any political subdivision of this state which is intended to conserve wildlife or wild plants.

Source: Laws 1975, LB 145, § 5; R.S.1943, (1993), § 37-434; Laws 1998, LB 922, § 356; Laws 2002, LB 1003, § 33.

§ 37-807. Commission; establish conservation programs; agreements authorized; Governor and state agencies; duties; public meeting; when required.

(1) The commission shall establish such programs, including acquisition of land or aquatic habitat or interests therein, as are necessary for the conservation of nongame, threatened, or endangered species of wildlife or wild plants. Acquisition for the purposes of this subsection shall not include the power to obtain by eminent domain.

(2) In carrying out programs authorized by this section, the commission shall consult with other states having a common interest in particular species of nongame, endangered, or threatened species of wildlife or wild plants 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 such species including, when appropriate, agreements for administration and management of any area established under this section or utilized for conservation of such species.

(3) The Governor shall review other programs administered by him or her and utilize such programs in furtherance of the purposes of the Nongame and Endangered Species Conservation Act. All other state agencies shall, in consultation with and with the assistance of the commission, utilize their authorities in furtherance of the purposes of the act by carrying out programs for the conservation of endangered species and threatened species listed pursuant to section 37-806 and by taking such action necessary to insure that actions authorized, funded, or carried out by them do not jeopardize the

continued existence of such endangered or threatened species or result in the destruction or modification of habitat of such species which is determined by the commission to be critical. For purposes of this subsection, state agency means any department, agency, board, bureau, or commission of the state or any corporation whose primary function is to act as, and while acting as, an instrumentality or agency of the state, except that state agency shall not include a natural resources district or any other political subdivision.

(4) The commission shall provide notice and hold a public meeting prior to the implementation of conservation programs designed to reestablish threatened, endangered, or extirpated species of wildlife or wild plants through the release of animals or plants to the wild. The purpose of holding such a public meeting shall be to inform the public of programs requiring the release to the wild of such wildlife or wild plants and to solicit public input and opinion. The commission shall set a date and time for the public meeting to be held at a site convenient to the proposed release area and shall publish a notice of such meeting in a legal newspaper published in or of general circulation in the county or counties where the proposed release is to take place. The notice shall be published at least twenty days prior to the meeting and shall set forth the purpose, date, time, and place of the meeting.

Source: Laws 1975, LB 145, § 6; Laws 1984, LB 1106, § 22; Laws 1987, LB 150, § 3; Laws 1991, LB 772, § 3; R.S.1943, (1993), § 37-435; Laws 1998, LB 922, § 357.

§ 37-808. Commission; issue regulations.

The commission shall issue such regulations as are necessary to carry out the purposes of the Nongame and Endangered Species Conservation Act in accordance with the Administrative Procedure Act.

Source: Laws 1975, LB 145, § 7; R.S.1943, (1993), § 37-436; Laws 1998, LB 922, § 358.

§ 37-809. Violations; penalties; conservation or peace officer; powers and duties; regulations.

(1) Any person who violates the provisions of subsection (3) of section 37- 805 or any regulations issued in implementation thereof or whoever fails to procure or violates the terms of any permit issued pursuant to section 37- 805 shall be guilty of a Class II misdemeanor.

(2) Any person who violates the provisions of subsection (8) of section 37- 806 or any regulations issued pursuant to subsection (7) of section 37-806 or whoever fails to procure any permit required by subsection (11) of section 37-806 or violates the terms of any such permit shall be guilty of a Class I misdemeanor. Any conservation officer or any peace officer of this state or any municipality or county within this state shall have authority to conduct searches as provided by law, and to execute a warrant to search for and seize any equipment other than equipment owned or operated by any common or contract motor carrier under the jurisdiction of the Public Service Commission or the Interstate Commerce Commission, business records, wildlife, wild plants, or other contraband taken, used, or possessed in connection with any violation of the Nongame and Endangered Species Conservation Act. Any such officer or agent may, without a warrant, arrest any person whom he or she has probable cause to believe is violating, in his or her presence or view, the act or any regulation or permit provided for in the act. Any 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 may seize any wildlife, wild plants, records, or property taken or used in connection with any such violation.

(4) Equipment other than equipment owned or operated by any common or contract motor carrier under the jurisdiction of the Public Service Commission or the Interstate Commerce Commission, wildlife, wild plants, records, or other contraband seized under the provisions of subsection (3) of this section shall be held by an officer or agent of the commission pending disposition of court proceedings, and thereafter be forfeited to this state for destruction or disposition as the commission may deem appropriate. Prior to forfeiture, the commission may direct the transfer of wildlife or wild plants so seized to a qualified zoological, botanical, educational, or scientific institution for safekeeping, with the costs thereof to be assessable to the defendant. The commission shall issue regulations to implement this subsection.

Source: Laws 1975, LB 145, § 8; Laws 1977, LB 40, § 188; R.S.1943, (1993), § 37-437; Laws 1998, LB 922, § 359.

§ 37-810. Act; how construed.

The Nongame and Endangered Species Conservation Act shall not be construed to apply retroactively to or prohibit importation into this state of wildlife or wild plants which may be lawfully imported into the United States or lawfully taken and removed from another state, or prohibit entry into this state or the possession, transportation, exportation, processing, sale or offer for sale, or shipment of any wildlife or wild plants which have been determined to be an endangered or threatened species in this state but not in the state where originally taken if the person engaging in such activity demonstrates by substantial evidence that such wildlife or wild plants were lawfully taken and lawfully removed from such state. This section shall not be construed to permit the possession, transportation by a person other than a common or contract motor carrier under the jurisdiction of the Public Service Commission or the Interstate Commerce Commission, exportation, processing, sale or offer for sale, or shipment within this state of species of wildlife or wild plants determined, pursuant to the Endangered Species Act, to be an endangered or threatened species, except as permitted by subsection (11) of section 37-806.

Source: Laws 1975, LB 145, § 9; R.S.1943, (1993), § 37-438; Laws 1998, LB 922, § 360.

§ 37-811. Nongame and Endangered Species Conservation Fund; created; use; investment.

There is hereby created the Wildlife Conservation Fund. The fund shall be used to assist in carrying out the Nongame and Endangered Species Conservation Act, to pay for research into and management of the ecological effects of the release, importation, commercial exploitation, and exportation of wildlife species pursuant to section 37-548, and to pay any expenses incurred by the Department of Revenue or any other agency in the administration of the income tax designation program required by section 77-27,119.01. Money shall be transferred into such fund from the General Fund by the State Treasurer in an amount to be determined by the Tax Commissioner which shall be equal to the total amount of contributions designated pursuant to section 77-27,119.01. Any money in the Wildlife Conservation Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act. Money remaining in the Nongame and Endangered Species Conservation Fund on September 1, 2007, shall be transferred to the Wildlife Conservation Fund on such date.

Source: Laws 1984, LB 466, § 7; Laws 1989, LB 258, § 2; Laws 1994, LB 1066, § 23; R.S.Supp.,1996, § 37-439; Laws 1998, LB 922, § 361; Laws 1999, LB 176, § 98; Laws 2007, LB299, § 18. Effective date September 1, 2007.