

STATE OF MAINE

—
IN THE YEAR OF OUR LORD
TWO THOUSAND AND SIXTEEN

—
S.P. 663 - L.D. 1636

An Act To Amend the Laws Relating to Endangered and Threatened Species

Emergency preamble. Whereas, acts and resolves of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, the Department of Inland Fisheries and Wildlife's ability to effectively manage endangered and threatened species in conjunction with human activity is key to the protection and recovery of a listed species; and

Whereas, this legislation provides the Department of Inland Fisheries and Wildlife with tools necessary to properly manage listed endangered and threatened species; and

Whereas, it is critical that this legislation take effect immediately to ensure the Department of Inland Fisheries and Wildlife can properly manage 3 recently listed bat species in conjunction with timber harvesting and other human activities; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 12 MRSA §12808, as amended by PL 2005, c. 477, §23, is further amended to read:

§12808. Unauthorized activities regarding endangered or threatened species

For the purposes of this section and section 12808-A, "to take," "take" and "taking" mean the act or omission that results in the death of any endangered or threatened species.

1. Prohibited acts regarding endangered or threatened species; negligence. Except as provided in ~~subsections 2 and 3~~ section 12808-A, a person may not negligently:

A. Import into the State or export out of the State any endangered or threatened species. A person who violates this paragraph commits a Class E crime;

B. Hunt, take, trap or possess any endangered or threatened species within the State. A person who violates this paragraph commits a Class E crime;

C. Possess, process, sell, offer for sale, deliver, carry, transport or ship, by any means whatsoever, any endangered or threatened species or any part of an endangered or threatened species. A person who violates this paragraph commits a Class E crime; or

D. Feed, set bait for or harass any endangered or threatened species. A law enforcement officer, as defined in Title 25, section 2801-A, subsection 5, must issue a warning to a person who violates this paragraph for the first time. A person who violates this paragraph after having previously been given a warning under this paragraph commits a Class E crime.

1-A. Prohibited acts regarding endangered or threatened species; intentional.

Except as provided in ~~subsections 2 and 3~~ section 12808-A, a person may not intentionally:

A. Import into the State or export out of the State any endangered or threatened species. A person who violates this paragraph commits a Class D crime;

B. Hunt, take, trap or possess any endangered or threatened species within the State. A person who violates this paragraph commits a Class D crime;

C. Possess, process, sell, offer for sale, deliver, carry, transport or ship, by any means whatsoever, any endangered or threatened species or any part of an endangered or threatened species. A person who violates this paragraph commits a Class D crime; or

D. Feed, set bait for or harass any endangered or threatened species. A law enforcement officer, as defined in Title 25, section 2801-A, subsection 5, must issue a warning to a person who violates this paragraph for the first time. A person who violates this paragraph after having previously been given a warning under this paragraph commits a Class D crime.

~~**2. Exceptions for certain purposes.** Notwithstanding subsections 1 and 1-A or section 10650 as it applies to rules adopted in accordance with this subchapter, the commissioner may:~~

~~A. Under such terms and conditions as the commissioner may prescribe, permit any act prohibited by this section or by rule for educational or scientific purposes or to enhance the propagation or survival of an endangered or threatened species; and~~

~~B. Under such terms and conditions as the commissioner may prescribe, permit any endangered or threatened species that enters the State and is being transported to a point outside the State to be so entered and transported without restriction in accordance with the terms of any federal or state permit.~~

~~**3. Exceptions; incidental take plan.** Notwithstanding subsection 1, the commissioner may:~~

~~A. Permit the taking of any endangered species or threatened species if:~~

- ~~(1) Such taking is incidental to, and not the purpose of, carrying out an otherwise lawful activity;~~
- ~~(2) The taking will not impair the recovery of any endangered species or threatened species; and~~
- ~~(3) The person develops and implements an incidental take plan approved by the commissioner to take an endangered species or threatened species pursuant to paragraph B; and~~

~~B. Allow a plan that minimizes the incidental taking of an endangered species or threatened species that specifies the following:~~

- ~~(1) A description of the specific activities sought to be authorized by the incidental take permit and an analysis of potential alternatives;~~
- ~~(2) The individual and cumulative effects that may reasonably be anticipated to result from the proposed actions covered by the plan;~~
- ~~(3) The recovery measures the applicant will implement to prevent, minimize and mitigate the individual and cumulative effects and any provisions that are necessary to prevent, minimize and mitigate circumstances that are likely to impair the recovery of any endangered or threatened species covered by the plan;~~
- ~~(4) The procedures for monitoring the effectiveness of the recovery measures in the plan;~~
- ~~(5) The anticipated costs of implementing the plan and the availability of necessary funding for the applicant to implement the plan; and~~
- ~~(6) Other modifications to the plan or other additional measures, if any, that the department may require and such other matters as the department determines to be necessary for the recovery of species consistent with this section.~~

~~The department shall seek input from knowledgeable individuals or groups on each incidental take plan for endangered or threatened species.~~

~~If any person fails to abide by the terms of any permit authorizing the incidental taking of an endangered or threatened species, the permit must be immediately suspended or revoked.~~

Sec. 2. 12 MRSA §12808-A is enacted to read:

§12808-A. Authorized activities regarding endangered or threatened species

Notwithstanding section 12808 and notwithstanding section 10650 as it applies to rules adopted in accordance with this subchapter, the commissioner may authorize certain activities regarding endangered or threatened species in accordance with the following.

1. Education, research, conservation and transportation. Under such terms and conditions as the commissioner prescribes, the commissioner may:

A. Authorize an act prohibited by section 12808 or by rule for educational or scientific purposes or to enhance the recovery or survival of an endangered or threatened species; and

B. Authorize a person to transport without restriction but in accordance with the terms of any federal or state permit an endangered or threatened species into, within or out of the State.

2. Specific activity; incidental take plan. Under such terms and conditions as the commissioner prescribes, the commissioner may authorize a person to take an endangered or threatened species pursuant to an incidental take plan if:

A. The taking is incidental to, and not the purpose of, carrying out an otherwise lawful activity;

B. The taking will not impair the recovery of any endangered or threatened species; and

C. The person develops and implements an incidental take plan in accordance with subsection 5 and that plan is approved by the commissioner. The commissioner may modify or waive the requirement under this paragraph if the commissioner determines the criteria in subsection 5 are substantially addressed in another permit, license or agreement.

The commissioner shall seek input from knowledgeable individuals or groups on each proposed incidental take plan developed under this subsection.

If the person violates any of the terms or conditions of an authorization granted pursuant to this subsection, the authorization must be immediately suspended or revoked and the person is subject to the prohibitions and penalties in section 12808 for that violation.

3. Widespread activity; incidental take plan. Under such terms and conditions as the commissioner prescribes, the commissioner may authorize the taking of an endangered or threatened species pursuant to a widespread activity incidental take plan developed by the commissioner in accordance with subsection 5 if:

A. The taking is incidental to, and not the purpose of, carrying out an otherwise lawful activity;

B. The taking will not impair the recovery of any endangered or threatened species; and

C. The commissioner determines that the activity is widespread, is conducted by a reasonably identifiable group of participants and poses a manageable risk of taking an endangered or threatened species.

The commissioner shall hold at least one public hearing and seek input from knowledgeable individuals or groups on each proposed incidental take plan developed under this subsection.

If a person violates any of the terms or conditions of an authorization granted pursuant to this subsection, the authorization must be immediately suspended or revoked for that person and that person is subject to the prohibitions and penalties in section 12808 for that violation.

4. Broad activity exemption. The commissioner may adopt rules to provide an exemption, under such terms and conditions as the commissioner determines necessary, for a specific activity otherwise prohibited by section 12808, if the commissioner determines the exemption:

- A. Addresses a specific activity that is widespread in its occurrence but may not have a reasonably identifiable group of participants;
- B. Poses little or no risk of taking an endangered or threatened species; and
- C. Will not individually or cumulatively impair the recovery of any endangered or threatened species.

The commissioner shall hold at least one public hearing and seek input from knowledgeable individuals or groups on each proposed rule to provide a broad activity exemption.

Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

5. Incidental take plan criteria. The commissioner may approve or adopt an incidental take plan developed pursuant to subsection 2 or 3 that minimizes the incidental taking of an endangered or threatened species and that provides the following:

- A. A description of the specific activities sought to be authorized by the incidental take plan and an analysis of potential alternatives;
- B. The individual and cumulative effects that may reasonably be anticipated to result from the proposed actions covered by the incidental take plan;
- C. The recovery measures the applicant will implement to prevent, minimize and mitigate the individual and cumulative effects and any provisions that are necessary to prevent, minimize and mitigate circumstances that are likely to impair the recovery of any endangered or threatened species covered by the incidental take plan;
- D. The procedures for monitoring the effectiveness of the recovery measures in the incidental take plan;
- E. The anticipated costs of implementing the incidental take plan and the availability of necessary funding for the applicant to implement the plan; and
- F. Other modifications to the incidental take plan or additional measures, if any, that the commissioner may require and such other matters as the commissioner determines to be necessary for the recovery of species consistent with this section.

Emergency clause. In view of the emergency cited in the preamble, this legislation takes effect when approved.