

LEGISLATIVE BILL 145

Approved by the Governor March 7, 1975

Introduced by Constitutional Revision and Recreation
Interim Study Committee, Syas, 13, Chmn.;
Anderson, 37; Keyes, 3; Burbach, 19

AN ACT relating to game and fish; to provide conservation, management, and protection of nongame wildlife, endangered species, and threatened species; to provide enforcement authority; to provide penalties; to provide severability; and to repeal sections 37-105 to 37-108, Reissue Revised Statutes of Nebraska, 1943.

Be it enacted by the people of the State of Nebraska,

Section 1. This act shall be known and may be cited as The Nongame and Endangered Species Conservation Act.

Sec. 2. As used in this act, unless the context otherwise requires:

(1) Conservation shall mean the use of all methods and procedures for the purpose 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. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, transplantation, regulated taking, and the periodic or total protection of species or populations;

(2) Commission shall mean the Game and Parks Commission;

(3) Ecosystem shall mean a system of living organisms and their environment, each influencing the existence of the other and both necessary for the maintenance of life;

(4) Endangered species shall mean 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;

(5) Endangered Species Act shall mean the Endangered Species Act of 1973, 87 Stat. 884;

(6) Nongame species shall mean any species of mollusks, crustaceans, or vertebrate wildlife not legally classified as game, game bird, game animal, game fish, furbearer, threatened species or an endangered species by statute or regulation of this state;

(7) Optimum carrying capacity shall mean 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 shall mean an individual, corporation, partnership, trust, association, or any 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;

(9) Species shall mean 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;

(10) Take shall mean to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect;

(11) Threatened species shall mean 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; and

(12) Wildlife shall mean any member of any nondomesticated species of the animal kingdom, whether reared in captivity or not, including any mammal, fish, bird, amphibian, reptile, mollusk, crustacean, arthropod, or other invertebrate, and includes any part, product, egg, or offspring thereof, or the dead body or parts thereof.

Sec. 3. 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 this 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.

Sec. 4. (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 the effective date of this act, 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.

Sec. 5. (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 provisions of this 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 provisions of this 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 the provisions of 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) to (3) 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) 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 this act.

(9) With respect to any endangered species of wild plants, it shall be unlawful, except as provided in subsection (8) 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 this 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 this act shall be void to the extent that it may effectively (a) permit that which is prohibited by this act or by any regulation which implements this act, or (b) prohibit that which is authorized pursuant to an exemption or permit provided for in this act or in any regulation which implements this act. This 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.

Sec. 6. (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 with 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 and utilize such programs in furtherance of the purposes of this act. All other state departments and agencies shall, in consultation with and with the assistance of the commission, utilize their authorities in furtherance of the purposes of this act by carrying out programs for the conservation of endangered species and threatened species listed pursuant to section 5 of this act, 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.

Sec. 7. The commission shall issue such regulations as are necessary to carry out the purposes of

this act in accordance with Chapter 84, article 9, Reissue Revised Statutes of Nebraska, 1943, and amendments thereto.

Sec. 8. (1) Any person who violates the provisions of subsection (3) of section 4 of this act, or any regulations issued in implementation thereof, or whoever fails to procure or violates the terms of any permit issued pursuant to section 4 of this act shall, upon conviction thereof, be fined not more than five hundred dollars or imprisoned not more than six months, or be both so fined and imprisoned.

(2) Any person who violates the provisions of subsection (8) of section 5 of this act or any regulations issued pursuant to subsection (7) of section 5 of this act, or whoever fails to procure any permit required by subsection (11) of section 5 of this act or violates the terms of any such permit shall, upon conviction thereof, be fined one thousand dollars or imprisoned not more than one year, or be both so fined and imprisoned.

(3) 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 this act. Any such officer or agent may, without a warrant, arrest any person whom he has probable cause to believe is violating, in his presence or view, this act or any regulation or permit provided for in this 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.

Sec. 9. The provisions of this 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 5 of this act.

Sec. 10. If any section in this act or any part of any section shall be declared invalid or unconstitutional, such declaration shall not affect the validity or constitutionality of the remaining portions thereof.

Sec. 11. That sections 37-105 to 37-108, Reissue Revised Statutes of Nebraska, 1943, are repealed.