

## LEGISLATIVE BILL 150

Approved by the Governor February 20, 1987

Introduced by Miller, 37

AN ACT relating to nongame and endangered species; to amend sections 37-431 and 37-435, Reissue Revised Statutes of Nebraska, 1943, and section 2-15,111, Revised Statutes Supplement, 1986; to change consultation requirements; to define terms; to require notice and a meeting prior to the reestablishment of certain species; and to repeal the original sections. Be it enacted by the people of the State of Nebraska,

Section 1. That section 2-15,111, Revised Statutes Supplement, 1986, be amended to read as follows:

2-15,111. The Water Management Board shall, in reviewing a project, ~~consult and make determinations be the entity responsible for consultation with the Game and Parks Commission if such project is subject to and compliance with the requirements of the Nongame and Endangered Species Conservation Act. Such consultation between the board and the commission shall satisfy the consultation requirements of the act. The consultation process shall be governed by such rules and regulations as the commission shall adopt and promulgate. Notwithstanding the provisions of subsection (3) of section 37-435, for projects reviewed by the board, no other state agency, board, or commission shall carry out any additional consultation or make further determinations provided for in such act.~~

Sec. 2. That section 37-431, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

37-431. As used in the Nongame and Endangered Species Conservation 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) Extirpated species shall mean any species of wildlife or wild plants which no longer exists or is found in Nebraska;

(7) 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 endangered species by statute or regulation of this state;

(8) ~~(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;

(9) ~~(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;

(10) ~~(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;

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

(12) ~~(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

(13) ~~(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. That section 37-435, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

37-435. (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 or her and utilize such programs in furtherance of the purposes of ~~sections 37-439 to 37-438~~ the Nongame and Endangered Species Conservation Act. All other state ~~departments and~~ agencies, except as provided in section 2-15,111, shall, in consultation with and with the assistance of the commission, utilize their authorities in furtherance of the purposes of ~~sections 37-439 to 37-438 the act~~ by carrying out programs for the conservation of endangered species and threatened species listed pursuant to section 37-434 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 shall mean 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.

Sec. 4. That original sections 37-431 and 37-435, Reissue Revised Statutes of Nebraska, 1943, and section 2-15,111, Revised Statutes Supplement, 1986, are repealed.