

National Caucus of Environmental Legislators

A Natural Legacy for the Future

State Laws for Endangered
and Threatened Species



NCEL

National Caucus of
Environmental Legislators



A Natural Legacy
*Strengthening State Laws for
Endangered and Threatened Species*



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Environmental Legislators

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Preface

In 1998, Defenders of Wildlife and the Institute of Public Law at the UNM School of Law published the first-ever compilation of state endangered species laws, why they are important, and what is needed to move wildlife protection forward at the state level. Today, almost 25 years later, the importance of these laws has increased ten-fold, as the planet is losing species and habitat faster than at any other time in all of human history.

State endangered species laws can help mitigate this rapid pace of biodiversity loss by seeking to assure the survival of the plants and animals unique to each state, from piping plovers in the East to Swainson's hawks in the West. While the federal Endangered Species Act serves the vital role of safeguarding plants and animals that are imperiled across ranges or on a national scale, states have a public trust responsibility to wildlife, and can protect those species within each state's borders that don't yet need the emergency room measures of the federal act.

The National Caucus of Environmental Legislators (NCEL) knows the critical role that states play in environmental protection, including the importance of states in protecting and conserving our wildlife. NCEL is also aware of the role that state endangered species laws have played and can play in stemming the tide of local, national, and global extinctions. To that end, we hope to provide readers -- legislators, state agency staff, and citizen activists -- with a comprehensive review of state laws and their policy implications. We believe that, armed with this information, policymakers will be able to make better decisions about efforts to protect our natural heritage. Equally important, we hope the information will facilitate collaboration among the many state agencies and stimulate creation of public-private conservation initiatives.

This work is bolstered by overwhelming public support for wildlife and habitat conservation. In a recent poll, [91% of respondents](#) felt that it was important to save imperiled wildlife and plants for future generations.¹ Such bipartisan support can provide even more impetus for change.

With this report, NCEL continues its mission of empowering a nonpartisan network of legislative champions to protect, conserve, and improve the natural and human environment. We applaud these dedicated lawmakers who advocate on behalf of the environment, coordinate strategies across party and state lines, and set a strong example for the value of shared learning and action. We hope that this report provides inspiration and guidance.

¹ Danielle Deiseroth, "Memo: Bipartisan Majorities Support Federal Conservation Initiatives," Data for Progress, (2021).

Executive Summary

With one-third of our nation's wildlife at risk of extinction, and the impacts of climate change accelerating, the time is now to find new and better ways to protect our natural heritage. Innovations must be found, not only for the wildlife and the habitats upon which they depend, but also for the current and future human generations who are inextricably linked to the natural world. State endangered species laws are one tool that can be used to this end.

With 47 states and Puerto Rico having laws aimed at protecting state-listed species, the potential for action at the state level is strong. Authorized by the federal Endangered Species Act, state laws have the ability to prevent federal listings, provide additional resources to federally-listed species protection efforts, and promote regional cooperation and ecosystem-wide coverage.

These laws, however, vary widely across the country, with some states describing their laws as having “no teeth” and being “woefully out of date,” and others have robust laws help to mitigate impacts, prevent take of known populations, and work towards recovery of listed species, such as Massachusetts and California. Legislation to shore up these laws will help strengthen the web of protection efforts that are so critically important.

Along with the critical need for more funding, several needed improvements to state endangered species laws are clear. The need for regular updates to a state's list of threatened and endangered species, a “take” definition that goes beyond direct take to include habitat destruction, landowner incentives, consultation requirements, and stronger plant protections have been cited by state wildlife agency staff as the most needed improvements to state laws.

Of course, state laws do not always result in a species' recovery. Challenges such as climate change, invasive species, development, a lack of funding, and the ever-shifting political winds can make species protection an uphill battle. These challenges mean that, in addition to strong state endangered species provisions, more needs to be done to bolster wildlife protection, from funding to incentives, education, and outreach.

On the ground is a dedicated cadre of state agency personnel who are working diligently to protect the species in their care, but who are under-funded and under-staffed, making their task daunting. Unfortunately, the proposed Recovering America's Wildlife Act (RAWA) did not pass, so state wildlife agencies remain severely underfunded. Now more than ever, stronger state endangered species laws are needed, as well as stronger state investments in endangered species protection to compensate for the lack of federal funding. In addition, the public trust responsibility of the states, and the urgent need for increased protection of wildlife and habitat, point to innovation at the state level as one path forward. Protecting biodiversity is protecting the legacy of this planet for our children and grandchildren, and is not a luxury, but a necessity for our survival.

Introduction

The news is heartbreaking. The world's populations of birds, fish, mammals, reptiles, insects, and amphibians have declined [69%](#) since 1970.² The crisis is only accelerating, with more species being lost [each day](#).³ North America has lost over [3 billion birds](#) since 1970, and insect populations are [down 40%](#).^{4,5} The U.S. Fish and Wildlife Service recently delisted [23 species](#) from its endangered and threatened species lists because they are believed to be extinct.⁶

This tragic loss of biodiversity means that future generations will not witness the great diversity of life we enjoy and depend on. The loss of biodiversity threatens human, environmental, and wildlife health by reducing ecosystem services such as zoonotic disease buffering, water filtration, pollination, soil replenishment, provisioning of game species, and recreational opportunities. Biodiversity loss also disproportionately affects people of color, low-income, and Tribal communities who have been systematically targeted with racist and harmful environmental policies and excluded from conservation efforts. Protecting biodiversity is essential for achieving environmental justice in all communities.

Despite the grim news, there is hope, as individuals, organizations, and governments step up to tackle the crisis. Among these efforts is work being done at the state level, as wildlife agencies and state legislatures grapple with their role as the stewards of the wildlife within their borders, and the possibilities for doing more to conserve these creatures and the habitat upon which they depend.

State wildlife agencies are currently doing innovative and inspiring work to protect the wildlife within their borders, despite overwhelming challenges from climate change, lack of funding, accelerated development, invasive species, and many others. These agencies have worked to stabilize and in some cases, to recover numerous species close to the brink of extinction, such as the sicklefin redfish in North Carolina, the nene in Hawaii, and the North American river otter in Nebraska. Federal, state, and regional collaboration has helped restore the icon of America, the bald eagle. Yet many more species are facing extinction, and more tools are needed to support these agencies' herculean efforts.

A strong state endangered species act, or set of laws, can provide the structure and backstop needed for these agencies to fully advance their legislative mandates. Yet the laws vary widely across the country. Some states have extensive endangered species legislation, such as Massachusetts and California (as aforementioned), while others, such as Alabama, have no statutory framework, and rely mostly on regulations and federal laws. Sharing laws, provisions, and information among states can help bolster

² World Wildlife Fund, "Living Planet Report 2022: Building a Nature-Positive Society," (2022).

³ Fred Pearce, "Global Extinction Rates: Why Do Estimates Vary So Wildly?," *Yale Environment* 360, (17 Aug 2015).

⁴ 3 Billion Birds, "3 Billion Birds Gone," (n.d.)

⁵ Francisco Sanchez-Bayo and Kris Wyckhuys, "Worldwide Decline of the Entomofauna: A Review of its Drivers." *Biological Conservation*, Vol 232, (2019).

⁶ US Fish and Wildlife Service, "U.S. Fish and Wildlife Service Proposes Delisting 23 Species from Endangered Species Act Due to Extinction." (2021).

these laws, and ultimately, the on-the-ground work being done to protect our nation's plants and animals.

Until recently, state endangered species laws have played a relatively minor part in protecting this nation's imperiled species. The federal Endangered Species Act has been the country's chief vehicle for conserving our endangered plants and animals. The states' role, historically focused on traditional game management, and has previously given a lower priority to protection of nongame species. Today, the importance of states in conserving the wildlife within each state's borders is well-recognized and much-needed, though the states are not always well-provisioned.

If carefully crafted, state endangered species laws can strengthen the web of national protection efforts. A strong state endangered species act, or set of laws,⁷ can complement the federal act, supplementing protection to those species already listed so that recovery can be achieved. A strong state law or full endangered species act also can provide real protection to species not listed under the federal act, thereby lessening the need for federal listing. Coordinated state endangered species laws also can increase ecosystem-wide protection efforts.

In this report is the history of state endangered species laws, their current status, and recommendations for improvement. Analysis of an effective endangered species program is interspersed with case studies and examples from around the country of what's working, what's not working, and what's needed to better protect our country's endangered species. The culmination of this effort is a compilation of the best examples from states across the country, that we hope will be used to spur discussion about the importance of strong state laws and to ensure comprehensive protection for imperiled wild plants and animals all across the nation, recognizing the unique nature of each state and the reality that wildlife know no political boundaries.

⁷ State endangered species legislation can vary from one provision, to a scattered set of laws, to an act specifically crafted to provide comprehensive protection to endangered and threatened species.

Background

Why States are Important

“As the United States’ laboratories of democracy, states can lead the world on innovative, impactful legislation to ensure a healthier world for wildlife and humans. We have to respond today.”

Colorado State Representative Alex Valdez

The role of state governments in protecting not just endangered species, but all species, can be summed up simply: state governments are the chief stewards of the wildlife within their borders. The states therefore serve vital roles in protecting and conserving their own plants, animals and habitats. The federal government's responsibility for protecting migratory waterfowl, birds of prey, marine mammals and species listed as endangered or threatened under the federal Endangered Species Act (ESA) has grown in the past several decades because of the decline of these species nationwide, and a lack of local protection by the states. At the same time, federal funding for national wildlife protection laws has been declining, and the laws themselves have been under attack.

Adding to this loss of federal and state funding and protection is accelerated development, climate change, exploding populations of invasive species, and shifting political winds. Yet state governments are more important than ever to protect species and other natural resources. Through their trust responsibility, states are expected to conserve species for future generations, and are on the frontline to not only protect these species but also to avert a federal listing.

States have a unique role to play. State governments, particularly in the West, own and manage large tracts of land of tremendous biological value. They exert considerable influence over statewide economic development and private land use, both of which significantly impact wildlife and habitat. They have the authority to restrict the introduction and spread of nonnative and invasive species within their borders - a serious and often overlooked threat to biodiversity. Even states with few public lands can foster private landowner conservation through incentives. States also can initiate cross-jurisdictional conservation efforts, which are essential to protect shared natural treasures that may encompass several counties or states, such as the Chesapeake Bay. Finally, states have the authority under the federal ESA to adopt comprehensive programs to protect endangered and threatened species.

Ultimately, the importance of state endangered species laws is found in the very nature of wildlife itself. Wildlife recognize ecological boundaries, not political ones, making consistency and strength among the state acts critical.

Why Species Are Important

“New Mexico ranks second in the nation in the number of native mammals that are of ecological, recreational, scientific, spiritual, cultural, and historic value. Yet sixty to eighty percent of our native bees and butterflies have declined. This affects our traditional ways of life, how our food is pollinated, and our native ecosystems. It is imperative we act now to protect our current biodiversity before we lose more to climate change and pollution.”

New Mexico State Senator Mimi Stewart

Human Dependence

Humans depend on the natural world for our livelihoods, and indeed for our very lives. A team of noted scientists told members of Congress in September 1997, almost a quarter century ago, that society ought to "move quickly" to preserve biodiversity because human health is "directly dependent" on the health of other species,⁸ a fact that hasn't changed, while the biodiversity crisis has only worsened.

One example of this dependence is our reliance on the natural world for our food supply. All agricultural crops were derived from once-wild species. Wild relatives of commercial plant varieties, found primarily in natural areas, often are resistant to the diseases that trouble domestic crops, making wild species key to maintaining crop health and diversity. In addition, more than one hundred U.S. crops depend on natural pollinators such as moths, butterflies and bees. The worldwide destruction of natural areas threatens these processes.

Wild species also are a source of most curative drugs. At least 70 percent of new drugs introduced in the United States in the last 25 years are derived from natural sources - plants, animals and microbes.⁹ Non-prescription sales of the herb elderberry, known to help the body fight disease, topped [\\$275 million](#) in 2020.¹⁰ These resources form the backbone for the American pharmaceutical and herbal industries, yet only a small fraction of the world's species have been screened for potential use as curative drugs. Worse yet, many species with medicinal potential are in danger of extinction. Put simply, extinction deprives the world of the potential medical advances that may be derived from wild species.

Wild plants and animals also hold important recreational value. Americans are fascinated by wildlife, and derive great pleasure from seeing animals and plants in their natural state. According to the [most recent survey](#), over a third of U.S. residents participated in wildlife-related recreation.¹¹

⁸ Boston Globe, "Scientists Talk Biodiversity to Congress," (9 Sep 1997).

⁹ Steenhuisen et al., National Cancer Institute, (2007).

¹⁰ Tyler Smith, Veronica Eckl, & Claire Morton Reynolds, "Herbal Supplement Sales in US Increase by Record-Breaking 17.3% in 2020: Sales of immune health, stress relief, and heart health supplements grow during COVID-19 pandemic," American Botanical Council, Issue 131, (2021).

¹¹ National Survey of Fishing, Hunting, and Wildlife-Associated Recreation, (2016). Note that the 2022 Survey will be published in Fall 2023.

The economy benefits from the over \$100 billion spent annually on wildlife-related recreation. Small communities and local economies benefit most from America's passion for wildlife. For example, the annual migrations of the sandhill crane and whooping crane brings 80,000 tourists and close to [\\$14 million](#) to Nebraska's Platte River region each year.¹² In Tennessee, wildlife viewing opportunities, such as [bald eagle tours](#) at Reelfoot Lake, contribute more than \$65 million to the state's sales and gasoline taxes annually.¹³ For the residents of these areas and others, wildlife provides more than just attractive scenery. It is a vital economic resource that must be protected.

Perhaps on the deepest level, species are our link to the natural world, to the fact that humans are a part of nature. We may experience this through an understanding of the interconnectedness of life, a feeling of responsibility to one's family and future, or simply through the need to get outside or sleep under the stars at night. A wildlife advocate from Wyoming summed it up decades ago when he said: "Wildlife is essential to our mental, physical and cultural well-being. Wildlife isn't just public property, but an irreplaceable, living symbol of the wildness and freedom that we human beings have nearly bred out of ourselves."¹⁴

Threats

As climate change continues unabated, [the world is on pace](#) to see warming of more than three degrees Celsius above pre-industrial levels.¹⁵ [Ninety percent](#) of our endemic species could face negative impacts if the earth warms to this extent.¹⁶ In 2021, the IPCC released a report on biodiversity, noting with high confidence, that as warming continues, risks of species extirpation, extinction, and ecosystem collapse are [escalating rapidly](#).¹⁷ Of the more than 77,300 assessed by the IUCN Red List, 63% of cycads (a division of plants), 41% of amphibians, 25% of mammals, and 13% of birds are threatened. The current species extinction rate is estimated to be between [1,000 and 10,000 higher](#) than the natural rate, due to [human activity](#).¹⁸

Along with climate change, [driving this massive loss](#) of biodiversity loss are habitat destruction, overexploitation of wildlife, the introduction of invasive species, and pollution,¹⁹ all of which are within our power to change.

¹² Sara Goboney, "UNK Study: The Economic Impact of Sandhill Cranes in Central Nebraska, UNK News," (2017).

¹³ Bob Hatcher, "Bald Facts About Bald Eagles in Tennessee," Tennessee Wildlife Resources Agency, (2013).

¹⁴ Robert Hoskins, Wyoming Chapter, Sierra Club, Letter to Editor, Casper Sun, (August 1977).

¹⁵ UNEP, "U.N. Emissions Gap Report," (9 Dec 2020).

¹⁶ Stella Marnes et al., "Endemism increases species' climate change risk in areas of global biodiversity importance," *Journal of Biological Conservation*, Vol 257, (May 2021).

¹⁷ IPCC Sixth Assessment Report, (2022).

¹⁸ World Wildlife Fund, "Archived Article on Biodiversity," (n.d.).

¹⁹ Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services, "Models of drivers of biodiversity and ecosystem change," (n.d.).

The loss of literally millions of distinct kinds of plants and animals, a massive pauperization of the planet's biological resources, would rival the greatest extinctions of the past 500 million years - extinctions from which the planet required more than 10 million years to recover. The significance of this loss of species is so great that it has been termed the "sixth mass extinction," yet this mass extinction is [human driven](#).²⁰ In Arizona, for example, over 70 species could go extinct in the coming years without protection.²¹ As the late biologist Dr. E.O. Wilson, a pioneer who spearheaded biodiversity conservation, [famously said](#), "This is the folly our descendants are least likely to forgive us".²²

Species can act as warning signs about the health of our planet, including our ecosystems. Healthy ecosystems help to regulate the cycles of weather and temperature, preserve natural soil fertility, decompose wastes, and control flooding and insect pests. When these functions are damaged, species suffer, including humans, who depend on properly functioning ecosystems. Habitat destruction from development, agriculture, logging, pollution, and invasive species is reaching the point where natural ecosystems, including California's ancient redwood forests, longleaf pine forests in the Southeast, beach dune habitats along the East Coast, and even subterranean communities of blind fish and crustaceans in [Tennessee caves](#) are all in danger.²³ It has been estimated that the loss of bats in North America could lead to agricultural losses of more than \$3.7 billion each year.²⁴

The recent COVID-19 pandemic presents yet another grave reminder of the impacts of ecosystem decline. As habitat fragmentation increases, wildlife are being pushed closer to human civilization, heightening the threat of zoonotic spillover. Approximately one-quarter of human deaths are caused by infectious diseases that [originate in wildlife](#),²⁵ and 75% of all emerging infectious diseases are [zoonotic](#).²⁶ Outbreaks are only expected to increase in severity and frequency; COVID-19 has already been identified just as "mild," and it will certainly [not be the last](#) zoonotic pandemic.²⁷

In each case, the decline of a species acts as an early warning sign, a distress signal from a floundering ecosystem. These complex systems can never be replicated by even the costliest human technologies. Ecologists, economists, and geographers have estimated the value of services provided by nature to be somewhere between [\\$16 and \\$44 trillion per year](#),²⁸ although this may be a gross underestimate, as studies do not account for the complete elimination of ecosystem services and [do not capture the value](#)

²⁰ Ann Gibbons, "Are we in the middle of a sixth mass extinction?" *Science*, (2 Mar 2011).

²¹ Arizona Republic, "Arizona Species Face Extinction," (18 Oct 2021).

²² E.O. Wilson and Stephen Kellert, eds., "The Biophilia Hypothesis," (n.d.).

²³ For example, Tennessee has 20% of the nation's caves, which are home to hundreds of vulnerable species. The Nature Conservancy, "Tennessee Caves (And the Bats that Use Them), (2021).

²⁴ Boyles, Justin G., P.M. Cryan, G.F. McCracken, and T. H. Kunz. 2011. Economic importance of bats in agriculture. *Science* 332 (6025) pp. 41-42.

²⁵ K. Smith et al., "Summarizing US Wildlife Trade with an Eye Toward Assessing the Risk of Infectious Disease Introduction," *EcoHealth* 14, 29–39 (2017).

²⁶ Inger Anderson, "Preventing the next pandemic: Zoonotic diseases and how to break the chain of transmission," UNEP (6 Jul 2020).

²⁷ Katherine Lang, "2 years of COVID-19: what have we learned?" *Medical News Today* (16 Mar 2022).

²⁸ S. Taha, "The Value of Nature's Services to Modern Economics," *Inomics*, (May 2022); D. Holzman, "Accounting for Nature's Benefits: The Dollar Value of Ecosystem Services," *Environmental Health Perspective* (April 2012).

of ecosystem services in their entirety.²⁹ As these studies highlight, the well-being of our country's wildlife is inextricably linked to the health of our economy.

These impacts are also especially felt by our most vulnerable human populations. The human rights impacts on the world's marginalized communities are a major concern world-wide, with the effects of environmental catastrophes such as climate change [disproportionately impacting](#) individuals and communities living in "already-fragile" ecosystems.³⁰

A Closer Look: Endangered Ecosystems

An [ecosystem](#) has been described as "a geographic area where plants, animals, and other organisms, as well as weather and landscapes, work together to form a bubble of life."³¹ In many ecosystems, much of the area and the life forms have been largely degraded.

For example, poorly managed grazing on western public lands has resulted in the loss of native grasses and other plants and has contributed to the imperilment of at least 340 species that are federally listed as endangered or threatened or are candidates for listing.

Suppression of natural fires has caused gradual deterioration of fire-dependent terrestrial and wetland communities such as prairies, barrens, southern canebrakes and longleaf pine and ponderosa pine forests. Fire suppression in longleaf pine forests can lead to invasion by hardwood trees and a major change in the species composition of the forest.³²



Ecosystems are the bedrock of life, and their health is fundamental to the health of the species that depend on them, including humans.

²⁹ Keohane, Nathaniel O., and Sheila M. Olmstead, "Markets and the Environment," Island Press/Center for Resource Economics, (2016).

³⁰ C. Dwyer, "Effects of Climate Change on Marginalized Communities," (23 Jan 2020).

³¹ National Geographic Society, "Ecosystems," (19 May 2022).

³² "It's Getting Hot Out There: Top 10 Places to Save for Endangered Species in a Warming World," Endangered Species Coalition, (January 2011).

Urgency and Possibility at the State Level

“The world is in the midst of one of the most explosive extinction episodes in history. But we are also undergoing a cultural transformation in awareness... around nature conservation issues... and a renewed sense that collective effort can make a difference. The combination of these forces has the potential to galvanize the world.”

Henry Paulson, Chairman and Founder of the Paulson Institute

Despite the urgency of the biodiversity crisis, there is reason for hope, particularly at the state level. In addressing economic, environmental, and housing and community development issues, the states repeatedly have been the nation's principal laboratories for policy change. Often, policy innovations pioneered by one state are picked up by others and eventually work their way into federal legislation.

Many states already have taken the lead in pioneering solutions to the wildlife and biodiversity crisis. As of 2022, ten states have passed legislation promoting wildlife corridors and connectivity, in part inspiring the federal [Wildlife Corridors Conservation Act](#),³³ passed in 2019, which was modeled after the state laws. New Hampshire State Senator David Watters learned from lawmakers in California and Colorado about legislation they passed to protect corridors for wildlife. Senator Watters wanted to do something about climate change, and he opted for a wildlife corridors bill because “animals are going to have to be able to move due to warming temperatures.” His bill [became law](#) in 2019.³⁴

State endangered species laws have a vital role to play in promoting solutions to the biodiversity crisis. One of the most potent options for adaptation or reversing the massive loss of habitat to prevent listing, for example, is to reduce fragmentation and increase natural habitat - key elements of many state endangered species laws and acts. States can also work across boundaries by pooling resources and information to protect species that cross state lines. Finally, states can lend their deep knowledge of the species, geography, and culture in their state to federal ESA efforts. In short, states are key players in protecting our invaluable wild plant and animal species.

An International Reckoning Towards Collective Action

The past few decades have seen growing concern and attention to the global biodiversity crisis. Two international bodies, the [Convention on Biological Diversity](#) (CBD) and the [Intergovernmental Panel on Biodiversity and Ecosystem Services](#) (IPBES) emerged as responses to the crisis. Together, these two bodies have become the leading voices for biodiversity science and conservation in the world.

³³ Wildlife Corridors Conservation Act of 2019, H.R. 2795.

³⁴ N.H. SB 200.

The Convention on Biological Diversity, an international treaty under the United Nations Environmental Programme, was formed in 1992 at the momentous Rio “Earth Summit.” The CBD has 3 main objectives:

1. The conservation of biological diversity.
2. The sustainable use of the components of biological diversity.
3. The fair and equitable sharing of the benefits arising out of the utilization of genetic material.

The CBD has grown to include 196 parties since its inception, yet there is one notable country missing: the United States. The CBD meets every two years to discuss its progress and implement future actions to protect the Earth’s biodiversity.

The biodiversity crisis has only worsened since the CBD’s formation, and in 2012, the IPBES was established under the United Nations Environmental Agreement. The IPBES is focused on strengthening the science-policy interface between biodiversity and ecosystem services through scientific assessments, as well as engaging with Indigenous and Traditional Knowledge. The IPBES has released 10 assessments as of 2022, including the world’s first global assessment of biodiversity and ecosystem services in 2019. The assessments that IPBES conducts include Summaries for Policymakers to inform and guide policy decisions to protect biodiversity at every level of governance.

Together, IPBES and the CBD are providing the global foundation for action against biodiversity loss. Their work, however, can only go so far, as it is primarily limited to the formation of global goals and dissemination of research. It is up to governments and NGOs at local, state, and national levels to use the information provided to slow and reverse biodiversity loss before the impacts on our world become more extreme.



The History of State Endangered Species Laws

The Power to Protect Wildlife

The role of states is defined through the U.S. Constitution. Under the 10th amendment, states have all powers not expressly delegated to the federal government.³⁵ Once the federal government has exercised its power, however, under the Supremacy Clause,³⁶ states are required to conform to the federal scheme.

In the wildlife arena, while the federal government has exercised its authority in several areas, states retain significant power and responsibility. This responsibility dates back to the origination of the public trust doctrine, in which states hold environmental assets such as water and wildlife as a “public trust.”

The public trust as it relates to wildlife has been honed through a history of cases developed over the past two centuries. Beginning with the U.S. Supreme Court case of *Geer v. Connecticut* in 1896,³⁷ the concept of a state’s duty as trustee over wildlife was born. In *Geer*, the Supreme Court recognized that states are essentially trustees over wildlife through their proprietary ownership, and thus held that the federal government did not have authority to regulate wildlife. A long line of federal cases ensued, delineating the federal and state roles in controlling wildlife, rejecting the ownership doctrine and acknowledging a federal role, until *Geer* was ultimately overturned in 1979.³⁸ Today, the public trust doctrine recognizes a state’s trust responsibility over the wildlife within its borders, while also recognizing the broad federal authority to regulate wildlife under the U.S. Constitution.³⁹

Several sources of federal constitutional authority over wildlife exist. The four powers that typically sustain federal wildlife legislation are: the Spending power,⁴⁰ the Treaty power,⁴¹ the Property Clause,⁴²

³⁵ U.S. Constitution, amend. X.

³⁶ Under Article VI of the U.S. Constitution (the Supremacy Clause), states are precluded from enforcing state laws that are inconsistent with federal laws.

³⁷ 161 U.S. 519 (1896).

³⁸ *Hughes v. Oklahoma*, 441 U.S. 322 (1979).

³⁹ The public trust doctrine has been primarily used in the legal realm to impose obligations regarding water management. Few states, however, recognize the public trust doctrine as imposing specific duties related to wildlife protection.

⁴⁰ The spending power originates in Article I, §8 of the U.S. Constitution, which gives the federal government the power to provide for the general welfare of the United States. In the wildlife arena, this power has been used to require states that accepted federal money to purchase lands to maintain wildlife reserves. See *U.S. v. Butler*, 297 U.S. 1 (1936).

⁴¹ Under the federal treaty power, the President has the power, with the advice and consent of the Senate, “to make treaties with other nations.” U.S. Const. Art. II, §2. Several federal laws have been enacted to implement wildlife treaties, starting with the Migratory Bird Treaty Act in 1918 (16 U.S.C. §703 et seq.).

⁴² The Property Clause, under Article IV, §3 of the U.S. Constitution, gives Congress the power to make all rules and regulations respecting property belonging to the United States. With federal lands comprising one-third of the land base in this country, the Property Clause is extremely important, and the Supreme Court confirmed the power to supplant state law on federal land. See, *Kleppe v. New Mexico*, 426 U.S. 529 (1976).

and the [Commerce Clause](#),⁴³ with the Commerce Clause as the most often cited to protect wildlife. Under this clause, Congress can regulate “persons or things” in interstate commerce, and the U.S. Supreme Court [has affirmed](#) that wildlife is a “thing” and part of the stream of commerce.⁴⁴ Understandably, the Commerce Clause has been called “one of the [most prolific sources](#) of national power.”⁴⁵

The first use of the Commerce Clause to regulate wildlife came in 1900 with the passage of the Lacey Act, prohibiting the interstate shipment of game taken in violation of state law.⁴⁶ Today, many of our most important environmental laws are based on the Commerce Clause, including the [Clean Water Act](#),⁴⁷ the [Clean Air Act](#),⁴⁸ the [Toxic Substances Control Act](#),⁴⁹ the Marine [Mammal Protection Act](#),⁵⁰ the [Bald and Golden Eagle Protection Act](#),⁵¹ and not surprisingly, the [Endangered Species Act](#).⁵²

Emergence of the Federal ESA

The federal government first sought to protect endangered species in 1966, when Congress passed the Endangered Species Preservation Act.⁵³ The new law recognized the economic and ecological value of species and the precarious existence of many of them. Based on the sound concept that a species cannot survive unless its habitat is conserved, the act authorized the Secretary of Interior to use federal funds to purchase lands inhabited by declining species.

But the law was weak. It did not prohibit the killing or injuring (“taking”) of protected species unless the conduct violated state law, and it did not directly address habitat degradation. Only species found in the United States were eligible for protection, and these were limited to vertebrate animals (mammals, birds, fish, reptiles, and amphibians). As a result, the taking of endangered species continued to be legal in those states that did not independently prohibit such actions.

Amendments in 1969 broadened the federal act to cover species found throughout the world and expanded the definition of protected “wildlife” to include some invertebrates.⁵⁴ The new Endangered Species Conservation Act also increased funding for habitat acquisition. Nevertheless, the law still lacked prohibitions on the taking of listed species, including takes caused by habitat degradation. An

⁴³ U.S. Const. Art. I, §8.

⁴⁴ *U.S. v. Lopez*, 514 U.S. 549 (1995).

⁴⁵ *Hughes v. Oklahoma*, 441 U.S. 322, 325 (1979).

⁴⁶ 16 U.S.C. §3371 et seq.

⁴⁷ 33 U.S.C. §1251 et seq.

⁴⁸ 42 U.S.C. §7401 et seq.

⁴⁹ 7 U.S.C. §136 et seq.

⁵⁰ 16 U.S.C. §§1361-1362, 1371-1384, 1401-1407.

⁵¹ 16 U.S.C. §668.

⁵² 16 U.S.C. §§1531-1544. Case law has even confirmed that wildlife found only in one state can affect interstate commerce and is thus subject to the federal Endangered Species Act. *National Association of Home Builders v. Babbitt*, 130 F.3d 1041 (D.C. Cir. 1997).

⁵³ Pub. L. No. 89-669, 80 Stat. 926:157.

⁵⁴ Pub. L. No. 91-135, 83 Stat. 275:150, 157, 158.

environmentally awakened American public asked for a stronger approach, and President Nixon agreed, saying that the 1969 act “simply does not provide the kind of management tools needed to act early enough to save a vanishing species.”⁵⁵ Congress, under the leadership of Representative John Dingell (D-MI), responded with a much more effective law, the Endangered Species Act of 1973 (“ESA”).⁵⁶

The purpose of the federal ESA is to provide a program for the conservation of endangered and threatened species, and to conserve the ecosystems upon which they depend.⁵⁷ It has [been described](#) as our nation’s “most effective law to protect at-risk species from extinction.”⁵⁸ Despite controversy and many efforts over the years to weaken the ESA, it remains a keystone environmental law in the United States.

Under the Act, all federal agencies are obligated to avoid taking actions that jeopardize the continued existence of listed species or that destroy or adversely modify critical habitat. The 1973 Act also extended protection to all members of the animal and plant kingdom and established a category for “threatened” species. Most importantly for this report, the ESA defined the role of the states to include cooperative agreements with the Secretary of Interior for those states that established programs for the conservation of listed species.

Breaking it Down: The Federal ESA in a Nutshell

The Endangered Species Act (“ESA”) was enacted by Congress in 1973 to prevent endangered and threatened plants and animals from becoming extinct. The following is an overview of its major provisions:

Section 3. A species or subspecies is endangered if it is “in danger of extinction throughout all or a significant portion of its range.” A threatened species is one that is likely to become endangered within the foreseeable future. A species includes both plants and animals, including invertebrates, but excludes insects determined to be a pest.

Section 4. Listings are determined by the Secretary (Dept. of Interior or Commerce), and are based solely on “best scientific and commercial data”; citizens can petition for listing. Includes endangered, threatened, and candidate species. Listings must be reviewed every five years. Critical habitat must be designated at the time of listing. Recovery plans for the conservation and survival of listed species are required, with exceptions.

⁵⁵ President Nixon addressed Congress on February 8, 1972; quoted in Defenders of Wildlife, *Saving America’s Wildlife: Renewing the Endangered Species Act* (July 1995).

⁵⁶ Rep. Debbie Dingell, a House co-sponsor of the Recovering America’s Wildlife Act, is the widow of Rep. John Dingell.

⁵⁷ 16 U.S.C. §1531.

⁵⁸ World Wildlife Fund, “The US Endangered Species Act,” (n.d.).

Section 5. Land acquisitions to conserve listed species are authorized.

Section 6. Cooperation with the states is required “to the maximum extent practicable”, and grants to states and landowners are authorized. Management agreements and cooperative agreements with states are authorized.

Section 7. Federal agencies must consult to avoid jeopardizing listed species or adversely modifying their habitat.

Section 9. It is illegal to import, export, take, possess, sell, or transport any endangered or threatened animal species. “Take” is broadly defined as: harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, and has been interpreted to include destruction of significant habitat for animals. The restrictions for plants are lesser and do not include “take.”

Section 10. Permits authorized to allow prohibited acts if done for scientific purposes, or to enhance propagation or survival of a species. Includes incidental take permits and other exceptions.

Section 11. A citizen suit provision authorizes any person to sue for enforcement of the ESA. Civil and criminal penalties are authorized, as well as imprisonment, forfeiture, and injunctive relief. A criminal violation may result in imprisonment and a fine of up to \$50,000. A civil violation of a major provision may result in a \$25,000 fine (knowing violation) or a \$12,000 fine. A violation of a minor provision, permit, or regulation may incur a \$500 fine.

Delegation to States

The federal government, through the ESA, exercises its power to protect endangered and threatened species and associated habitat. But the role of the states was recognized from the outset, with many mechanisms available for coordination through cooperative agreements and management agreements, as well as conservation plans and pre-listing/candidate conservation agreements.

Cooperative agreements were a primary driver for the creation of state endangered species laws. Under section 6 of the ESA, any state that establishes and maintains an “adequate and active program” for the conservation of endangered and threatened species receives assistance with implementation and cooperation from the federal government. An “adequate and active program” must be one that is administered by a state agency with the authority to conserve endangered or threatened species, and must include an acceptable conservation program for all resident fish and wildlife species determined to be endangered or threatened, authority to conduct scientific investigations and to acquire land or habitat, and a provision allowing public participation in designating species as endangered or threatened.⁵⁹

⁵⁹ 16 U.S.C. §1535.

Today, all 50 states plus Puerto Rico have entered into Cooperative Agreements to protect federally-listed animals, and the majority of states have entered into Cooperative Agreements to protect plants.⁶⁰ A major incentive is that with a [cooperative agreement](#) comes money⁶¹ - the ESA authorizes Congress to appropriate to the states up to five percent of the combined amounts collected by the Federal Aid in Wildlife Restoration Act (the [Pittman-Robertson Wildlife Restoration Act](#) of 1937)⁶² and the Federal Aid in Sport Fish Restoration Act (the [Dingell-Johnson Sport Fish Restoration Act](#) of 1950),⁶³ which impose fees on hunting and fishing activities and equipment. The appropriation is distributed to the seven USFWS regions based on a number of factors, including the number of listed species within that region.⁶⁴

Management agreements are another tool for states under section 6 of the ESA, providing funding for state management of land areas established to conserve a listed species.⁶⁵ States can also participate in Habitat Conservation Plans (HCPs) with private landowners under section 10 of the ESA, allowing for the incidental take of listed species in exchange for a plan to reduce habitat and species loss.⁶⁶ Finally, Candidate Conservation Agreements (CCAs) can be used as a way to avoid federal listing with an effective state plan for management under section 10 of the ESA.⁶⁷ These voluntary agreements provide incentives for private landowners to conserve candidate and other unlisted species that are likely to become candidates in the future.

The most recent change to states' management of endangered and threatened species occurred in 2000, when Congress created the State and Tribal Wildlife Grants program to address the longstanding need to conserve declining fish and wildlife.⁶⁸ Since the inception of the program, over \$1 billion has been appropriated to state, territorial and District of Columbia fish and wildlife agencies.⁶⁹ The program led to the development of State Wildlife Action Plans (SWAPs) and is the principal source of funding for their implementation. The plans must be updated every ten years to ensure that they capture current wildlife trends. It also necessitated that "Species of Greatest Conservation Need" be identified within each state. Currently, over [17,118](#) species are listed within SWAPs, including rare and uncommon species that rely on imperiled habitats, as well as state and federally listed endangered and threatened species.⁷⁰

⁶⁰ U.S. Fish and Wildlife Service, Ecological Services Program (December 2022).

⁶¹ 16 U.S.C. §1535(d)(1).

⁶² 16 U.S.C. §§669-669i.

⁶³ 16 U.S.C. §§777-777l.

⁶⁴ Allocations are based on the following factors: a) the international commitments of the U.S. to protect listed species; b) the readiness of a state to proceed with a conservation program consistent with the ESA's objectives; c) the number of listed species within a state; d) the potential for restoring species; e) the relative urgency to initiate a program in terms of survival of the species; f) the importance of monitoring the status of a candidate species to prevent significant risk to its well-being; and g) the importance of monitoring the status of a recovered species to prevent re-listing. 16 U.S.C. §1535(d)(1).

⁶⁵ 16 U.S.C. §1535(b).

⁶⁶ Habitat Conservation Plans, U.S. Fish and Wildlife Service, (n.d.).

⁶⁷ Candidate Conservation Agreements, U.S. Fish and Wildlife Service, (n.d.).

⁶⁸ State Wildlife Grants, U.S. Fish and Wildlife Service, (n.d.).

⁶⁹ *Id.*

⁷⁰ Compiled National List of Species of Greatest Conservation Need, USGS, (n.d.).

The Recovering America's Wildlife Act (RAWA) legislation⁷¹, which failed to pass in Congress in December 2022, would have greatly accelerated these efforts. The bill would have amended the [Pittman-Robertson Wildlife Restoration Act](#) of 1937 to provide states and tribes with \$1.397 billion dollars in funding annually for wildlife protection in perpetuity.⁷² One of the most significant aspects of the bill was that 15% of these funds would have been dedicated to protecting federal and state endangered and threatened species, candidate species, and species proposed for listing. While the future of RAWA is uncertain, for now, states must find other funding sources for conserving the thousands of species listed within SWAPs.

⁷¹ H.R. 2773, S. 2372.

⁷² *Id.*

The Role of State Endangered Species Laws

Based on this federal framework, states have unlimited opportunities to help conserve threatened and endangered species. These opportunities include:

- Preventing Federal Listings
- Providing Additional Resources
- Promoting an Ecosystem Approach

Preventing Federal Listings

Almost every state has stepped up to protect endangered and threatened species by enacting their own state endangered species laws or acts, though protections vary widely. These laws can help protect species before they need the emergency room measures of the federal ESA, by enacting safeguards to conserve species within a state, as well as across a region. Courts have confirmed that state statutes protecting endangered species of wildlife are valid, as long as they do not permit what is prohibited by the ESA or otherwise weaken protections for federally-listed species.⁷³

In many states, species not on the federal list are the primary focus of endangered species protection. Nebraska, New Jersey, New York, and Minnesota, for example, reported that their work mostly emphasizes state-listed species that are not yet federally listed. New Mexico recently de-listed the Gould's turkey, in part as a result of the state's recovery plan, keeping it from needing federal resources.⁷⁴ In Connecticut, state efforts to protect the timber rattlesnake, such as habitat protection on state lands, have been successful for this once-decimated species. A staff person with the Vermont Fish and Wildlife department sums it up: "If states effectively protected state-listed species, fewer species would need federal protection."

Case Study: Prevention of a Federal Listing Through State Efforts - Arkansas Darter

The Arkansas Darter is a small, 2.5 inch-long fish species of the perch family, native to portions of Arkansas, Colorado, Kansas, Missouri, and Oklahoma within the Arkansas River Basin. Reduction in streamflow from groundwater pumping is the main threat the Darter faces, although habitat fragmentation from development and runoff pollution from agriculture are also [prominent threats](#).⁷⁵ The fish is a state-listed threatened species in Kansas, but thanks to state efforts, federal listing has been prevented.

⁷³ See, *Nettleton v. Diamond*, 313 N.Y.S.2d 893 (1970) (ESA was not designed to preclude state action); *H.J. Justin and Sons, Inc. v. Brown*, 519 F. Supp. 1383 (E.D. Cal. 1981) (ESA expressly permits states to continue to legislate and regulate species).

⁷⁴ Hannah Grover, "Game Commission Votes to Delist Gould's Turkey", NM Political Report, (October 15, 2022).

⁷⁵ "Arkansas Darter," Kansas Department of Wildlife and Parks (n.d.).

The state of Kansas designated the Arkansas Darter as threatened in 1978 under its Nongame and Endangered Species Conservation Act. After two decades of monitoring and research on the status of the state's Arkansas Darter populations, the Kansas Department of Wildlife and Parks released a [recovery plan](#) for the species in 2002.⁷⁶ The plan outlines rigorous stream monitoring protocols for the four major Arkansas Darter sub-populations within the state. These protocols include minimum flow standards that can trigger water right use restrictions, and encouragement of water conservation maximization measures by irrigators.

Starting in 1989, the Arkansas Darter has been considered for federal listing multiple times.⁷⁷ However, because groundwater depletion now impacts [less than 25%](#) of the species range,⁷⁸ and may be more resilient to drought than originally thought, the species has not been federally listed as threatened or endangered, thanks to the knowledge obtained through ongoing monitoring and efforts from the Kansas Department of Wildlife and Parks.



Photo Source: Uland Thomas
North American Native Fish Association

Case Study: Heading for Federal Listing? - The New England Cottontail

The New England Cottontail is a small species of rabbit that predominantly ranges from southern Maine to southern New York. The New England Cottontail was considered for federal listing in 2006 due to population decline across its range. The rabbit suffers most from early successional habitat (young forests) loss, which is the result of land use changes, fragmentation, and lack of support for forest harvests. Forested lands that were previously kept in agriculture or timber production were maintained at an early seral stage that cottontails preferred. As these lands have been converted to development, the remaining surrounding forests have been allowed to mature to late seral stages that are not ideal for cottontail. The New England Cottontail now finds itself with much less space to call its home.



Photo Source: United States Fish and Wildlife Service

⁷⁶ Dr. Bill Layher, "Recovery Plan for the Arkansas Darter," Kansas Department of Wildlife and Parks (2002).

⁷⁷ The Arkansas Darter remains a candidate species under the federal ESA.

⁷⁸ Federal Register, "Rules and Regulations; Vol. 81, No. 194," (2016).

The New England Cottontail is also being outcompeted by the invasive Eastern Cottontail which was introduced to the Northeast to compensate for the loss of the New England Cottontail. However, the Eastern Cottontail's ability to thrive in all habitats has put pressure on the New England Cottontail, which is an edge specialist and specifically requires younger forests to thrive.

These two factors have put the New England Cottontail on numerous state endangered species lists in the Northeast. State agencies are attempting to reverse this loss and devised the [Conservation Strategy for the New England Cottontail](#),⁷⁹ which was last updated in 2017. Efforts to conserve the species include regional cooperation, habitat restoration and protection, population monitoring, and research. These efforts have so far been effective to keep the New England Cottontail off the federal endangered species list. Yet, despite state agencies' best efforts, a history of continued decline due to decreased habitat availability and out-competition by the invasive Eastern cottontail, likely means that the New England Cottontail will soon require federal protections.

Providing Additional Resources

For species already on the federal list, a state act can provide another line of defense. The bald eagle, for example, was once declining due to the deadly effects of DDT. It has made a tremendous recovery thanks to both federal and state efforts, especially in states such as Oregon, New Jersey, and Vermont (the last state to de-list the bald eagle), where the species was also state-listed. By pooling resources with the U.S. Fish and Wildlife Service and by coordinating recovery activities, species management and recovery efforts can go further, so that a species can ultimately be removed from the federal ESA list.

In interviews for this report, several wildlife agency staff expressed their appreciation of the federal act, as it provides a consistent approach for endangered species protection across the states. As one respondent pointed out, differing state laws in each of the states can result in weak and inconsistent protection for species that cross state lines. The bog turtle, for example, is the smallest turtle in North America and is declining due to the illegal pet trade, and the loss of wetland habitat. A patchwork of state laws exist, but didn't provide enough consistent protection, resulting in its listing as threatened under the federal ESA. The federal act provides a consistent approach across boundaries, expressed by one state staffer: "The broad, interstate view and coordination that can be provided by the U.S. Fish and Wildlife Service is important to the protection of these species."

⁷⁹ Dr. Steven Fuller and Anthony Tur, "Conservation Strategy for the New England Cottontail" (2012).

Case Study: When State/Federal Cooperation Leads to Downlisting - June Sucker

Over one thousand years ago, the [June sucker](#) was one of only twelve fish species in Utah Lake, and served as a major food source for the indigenous Fremont people. Fast forward to present day: the June sucker is now one of only two native species left in the lake. However, this species' persistence was not without tumult.⁸⁰



Photo Source: June Sucker Recovery

In the late 1960's, the June sucker faced [two prominent threats](#): Utah Lake had become a dumping ground for waste products and sewage from companies like Geneva Steel, and in addition, the species became a popular harvest for fertilizer.

Following the introduction of the federal Clean Water Act and the Endangered Species Act in 1972 and 1973, respectively, June suckers were still at risk, and were declared endangered by the USFWS in 1986, with fewer than 1,000 fish remaining in Utah Lake.⁸¹

Enter jeopardy - no, not the game show. By 1993, there were roughly 300 individual June suckers left - a steep drop from their historical abundance - and the ones that remained were reaching the end of their lifespan. The USFWS activated a "jeopardy" option under the federal ESA, which triggered federal, state, and local partners to coordinate efforts on recovering the species. Three years later, another agreement was developed among nine organizations, including Utah's Division of Natural Resources and the USFWS, to help manage the June sucker's recovery.

This extensive partnership network was the genesis for the sucker's swift recovery. Through a combination of refuge population management, hatching, transfer to Utah Lake, and thorough management of wild populations, numbers began to rise. In 2019, with numbers in the thousands, a proposal was submitted by the June Sucker Recovery Implementation Program to reclassify the June sucker from endangered to threatened, which proposal was ultimately approved. Only three other endangered fish in the U.S. have also been successfully downlisted.

There is no doubt that joint state and federal agency efforts and partnerships were the linchpin in this species' recovery.

Promoting an Ecosystem Approach

Finally, states can play an innovative role in ensuring regional protection of species by collaborating across state lines, as many state-listed species and virtually all federally-listed species occur across neighboring states. The Northeast provides an excellent example of this, with several respondents

⁸⁰ June Sucker Recovery Implementation Program, "Meet the June Sucker" (n.d.).

⁸¹ June Sucker Recovery Implementation Program, "A June Sucker History" (n.d.)

referring to their active collaborative efforts with neighboring states, from coordinating on their State Wildlife Action Plans to species-specific protection efforts.

The piping plover has benefited from these efforts, where their numbers in Massachusetts have increased from less than 300 pairs in the early 1990s to over 700 pairs, due to regional collaboration efforts. Similarly, Pennsylvania now has nesting piping plovers again after being absent since 1955 because of basinwide collaboration. In the opposite corner of the U.S., Arizona and New Mexico have successfully worked together to manage cross-over species like the Chiricahua leopard frog through safe harbor agreements and collaboration with ranchers, leading to the species' downlisting to threatened. And on the West Coast, the Mardon Skipper Butterfly was kept off of the federal endangered species list due to the efforts of a [broad working group](#) from Washington, Oregon, and California.⁸²

Case Study: The Prairie Chickens of America - Survival Hangs in the Balance

The low booming courtship echos of the prairie chicken may soon disappear from America's grasslands and plains. The Lesser and Greater prairie chickens are two closely related species that are facing decline across their range. These birds require large swaths of intact prairie and grasslands to breed and disperse, yet most of this land has been lost due to fragmentation and land-use conversion.



Photo Source: Mary Hammel

States have been working together to save these species, but progress has varied. Kansas initially saw great success in its recovery efforts for the Lesser prairie chicken, yet since then, the species has been struggling because of habitat fragmentation. A project in Missouri between [2013-2017](#) translocated Greater prairie chickens from viable populations in Nebraska, where the species is stable. However, the reintroductions have shown mixed results as the state lacks large, contiguous, treeless grasslands that can support Greater prairie chickens. This has prevented sustained reproduction, with only remnant individuals occurring in the state.

Wisconsin is facing a similar problem of limited habitat as many of its grasslands are maturing into forests. Fragmentation by agriculture and other pressures have left the state with few options to recover the species. Now, the federal government has stepped in and listed two distinct population segments, the southern Lesser prairie chicken as endangered, and the northern Lesser prairie chicken as threatened, [effective](#) in January of 2023.⁸³

⁸² Rich Hatfield, Scott Hoffman-Black, and Sarina Jepsen, "The Imperiled Mardon Skipper Butterfly: An Initial Conservation Success," *Butterfly Conservation in North America* (book), (2015).

⁸³ Aislin Maestas, "U.S. Fish and Wildlife Service Lists the Lesser Prairie-Chicken Under the Endangered Species Act," USFWS, (2022).

Case Study: Regional Protection and Partnerships Help Recover the River Otter

River otters' ears must be ringing. Throughout our interviews, multiple states referenced this acrobatic freshwater mammal as a successful example of how regional collaboration can save imperiled species.

In Nebraska, following seasons of unregulated trapping and habitat destruction, river otters were few and far between. By 1986, the river otter was state listed as endangered, so agencies began working with other states, and even Canada, to help facilitate an ultimately successful reintroduction plan. Trappers were also a big part of this effort, as they refrained from setting snares and traps where otters had been sighted, and also reported sightings themselves. Fast forward to 2020, and there are over 2,000 river otters in the state.

Once [thought to be extirpated](#) in South Dakota, river otters were taken off the state's threatened list in 2020.⁸⁴ The success can largely be attributed to the [Flandreau Santee Sioux Tribe](#),⁸⁵ who facilitated a series of reintroductions of 35 individual river otters from other states along the Big Sioux River in 1998 and 1999. In addition, thorough monitoring efforts have contributed to the species' delisting and recovery. Lastly, cooperation from trappers to do as much as possible to avoid incidental trapping has proven fruitful in maintaining the river otter's health and safety.

In Illinois in the 1980s, there were [fewer than 100 river otters](#) left in the state.⁸⁶ Today, they can be found in every county. Between 1994 and 1997, more than 340 otters were trapped in Louisiana and released in Illinois. Following careful monitoring and riparian conservation efforts, populations began to rebound. By 2004, the otter was delisted from the Illinois SESA, and today, there are enough river otters that there is now a trapping season - a testament to the collaboration of states across the country.



⁸⁴ South Dakota Department of Game, Fish and Parks, "River Otter," (2020).

⁸⁵ South Dakota Department of Game, Fish and Parks, "South Dakota River Otter Management Plan," (2020).

⁸⁶ Mark Filippino, "Welcome Back, Otters: Could The River Otter Call Chicago's Loop Home?" WBEZ Chicago, (2017).

State Endangered Species Laws - What They Look Like Today

Today, 47 states and Puerto Rico have some form of endangered species legislation on the books. The laws vary as widely as the landscapes from which they come. These laws range from simply prohibiting either the taking of or trafficking in an endangered species to more comprehensive schemes for the listing, management, and protection of endangered species. Nevada was the first state to declare, in 1969, that the people of the state have an obligation to conserve and protect native species threatened with extinction.⁸⁷ Kentucky was the most recent state to pass an act protecting imperiled species, passing its Rare Plant Recognition Act in 1994.⁸⁸ Many other states have made changes to their laws and acts in subsequent years.⁸⁹

Many of the existing 47 state endangered species laws merely provide a mechanism for listing and prohibit taking of or trafficking in listed species. In Arizona, for example, no mechanisms for recovery, consultation, or critical habitat designation exist, as is the case in the majority of state laws.⁹⁰ Idaho authorizes the classification of species as threatened or endangered and prohibits some take, but offers little else in the way of protections.⁹¹ Georgia, although it has an Endangered Wildlife Act, has no specific statutory provisions related to endangered species, other than penalty provisions for take, with many of its protections found in rules rather than statute.⁹²

Three states - Alabama, West Virginia, and Wyoming - have no endangered species legislation, relying instead on the federal act, state regulations, and nongame programs. Alabama has an endangered species list by regulation, but no statutory protection measures. West Virginia relies in part on regional collaboration, other state statutes such as cave protection laws, and what one respondent described as “piecemeal” programs without the umbrella protections of a state endangered species law. Wyoming focuses on species identified as those in greatest conservation need from the State Wildlife Action Plans.

Some states have limited protections. Utah’s legislation, for example, is focused on penalties for destruction of threatened and endangered species, but the state has no other statutory provisions. Instead, the state relies on creative solutions such as multi-species and landscape protection, including wildlife corridors. Arkansas’ laws are limited to a declaration of the state’s intent to protect threatened and endangered species for present and future generations, and authorization of land purchases for habitat protection and restoration.

⁸⁷ Nev. Rev. Stat. Ann. §§503.584 - .589.

⁸⁸ Ky. Rev. Stat. Ann. §§146.600 - .619.

⁸⁹ See “Recent Efforts” section of this report for an overview of recent changes to state endangered species laws.

⁹⁰ Ariz. Rev. Stat. Ann. §17-296.

⁹¹ Idaho Code, §§36-201, -202.

⁹² Ga. Code Ann. §§27-3-130 to -133. Reliance on rules is not uncommon; Florida also relies heavily on its rulemaking rather than legislative functions, and Missouri’s take prohibitions are found in rule rather than statute.

Several states have more comprehensive laws. Massachusetts' law has been described by some as the best in the country. The Massachusetts Endangered Species Act covers listings for both plants and animals (including subspecies and species of special concern, plus species on the federal list), requires state agency consultation, prohibits take (including disruption of activity such as breeding and nesting), requires critical or "significant" habitat designation, authorizes incidental take, and provides for substantial penalties.⁹³ The act does not, however, require recovery plans, does not authorize emergency listing, and does not include any private landowner incentives.

California's law is also strong. It includes subspecies and candidate species, has a detailed process for science-based listings, contains consultation provisions, hefty penalties, incentives such as incidental take permits, habitat conservation plans, and safe harbor agreements, and authorizes (though does not require) recovery plans.⁹⁴

Acts in many other states, including Maine, Kansas, and Hawaii, also contain substantial measures. Maine's laws, for example, include state agency consultation, plant protection (in a separate statute), and authorize both critical habitat designation as well as recovery plans (though not required).⁹⁵ Kansas authorizes emergency listing, requires recovery plans, and offers several private landowner incentives.⁹⁶ Hawaii offers landowner incentives, and uniquely provides for citizen suits.⁹⁷ Puerto Rico's laws emphasize habitat protection, and include strong penalties.⁹⁸

Aside from the handful of states with strong statutory measures, the majority of state endangered species laws on the books today have been described as "inadequate," "comparatively modest," and "likely to undermine conservation and recovery" without the more comprehensive federal scheme of the ESA.⁹⁹ Yet as one author stated, "[b]y virtue of their constitutional powers, their expertise, and their on-the-ground personnel, states could accomplish far more than the federal agencies directly responsible for implementing the federal ESA."¹⁰⁰ A deep dive into what's working, what's not working, and how states could improve their existing legislation is therefore important to help improve endangered species protection across the country.

⁹³ Mass. Gen. Law Ann. §§1 - 7.

⁹⁴ Cal. Fish and Game Code §§2050 - 2115.5.

⁹⁵ Me. Rev. Stat. Ann. 12 §§12801-12810.

⁹⁶ Kan. Stat. Ann. §§32-960, -960a, -962.

⁹⁷ Haw. Rev. Stat. Ann. §§195D-1 to -32.

⁹⁸ P.R. Code Ann. 12 §§107-107u.

⁹⁹ See, *Conservation Limited: Assessing the Limitations of State Laws and Resources for Endangered Species Protection*, A. Camacho et al., UC Irvine School of Law Center for Land, Environment, and Natural Resources (August 2017).

¹⁰⁰ Robert Fischman et al., *State Imperiled Species Legislation*, 48 *Envtl. L.* 81 (2018).

What's Working, What's Not Working

For this report, NCEL staff interviewed state wildlife agency staff across the country, from Alaska to Florida. After over 40 interviews, what emerged was a complex quilt of how laws work, how they may not be working, and what's needed to bolster protection.

Along with specific questions about their state's laws, we asked each state agency to rate how useful they deemed their state endangered species laws to be. The answers ranged widely, with some states describing their laws as having "no teeth" and being "woefully out of date" to states where the laws help to mitigate impacts, prevent take of known populations, and "send a message" that the state has "a commitment to species conservation." The need for regular updates to a state's list of endangered and threatened species, a take definition that goes beyond direct take to include habitat destruction, landowner incentives, and stronger plant protections were cited as the most needed improvements to state laws.

Each state is of course unique, from land ownership to land use. In the East, the land is largely privately owned, while in the West federal and state governments own the bulk of the land. Agriculture predominates in the Midwest, logging has constituted a major land use in the Pacific Northwest, and chip mills abound in the Southeast. Numerous other differences, from geography to population density and political climate, also provide important distinctions among states.

What didn't vary amongst the respondents was their obvious dedication to conserving and protecting the wild plants and animals under their charge, either in conjunction with strong state laws, or in spite of weaker laws.

Methodology

As noted above, wildlife agency staff from over 40 states were interviewed for this report; the survey used for these interviews can be found at the end of this report in Appendix A, and the findings are presented throughout the narrative.¹⁰¹

In addition, statutory provisions from all 50 states plus Puerto Rico were compiled, reviewed, and analyzed by NCEL staff. These statutory provisions include:

- How and when listing decisions are made
- How species are defined
- The application of take prohibitions beyond direct take to habitat modification and private lands
- Penalties and enforcement, including citizen suit provisions
- State agency consultation requirements
- Critical habitat and habitat acquisition authorities

¹⁰¹ Note that staff names are not used in order to ensure the confidentiality of their responses.

- Requirements for recovery planning
- Take exceptions through permits, including incidental take
- Incentives for private landowners

A summary of each state’s laws can be found in Appendix B.

State rules and regulations developed by agencies, designed to implement the statute upon which they are based, can also be a source of legal protection for species, and [tribal codes](#) may provide legal protections for wildlife found on tribal lands based on tribal sovereignty.¹⁰² Due to the breadth and ever-changing nature of these myriad rules, regulations, and codes, however, this report focuses solely on state statutory provisions.

Statutory Provisions

Below is a description of each of the different types of provisions found in state endangered species laws, and how these laws are working on the ground, based on interviews with respondents. Appendix C contains one or more of the best examples of these laws from states across the country, which can be used individually to bolster a state’s existing laws, or in combination to develop a more comprehensive act. In addition, a model law, developed as part of the original 1998 report, can be found at Appendix D.

Listing

Listing Process

Listing is the keystone mechanism for species protection, as it “rings the bell” that a plant or animal is in need of concerted effort to prevent it from extirpation or extinction. As such, overwhelmingly state agencies agreed that listing must be based solely on scientific data, rather than allowing economic impacts to be factored into the process. In Kansas, for example, recommendations for listing to the Department of Wildlife and Parks from a Threatened and Endangered Task Committee are based solely on science, without consideration of political and economic interests.¹⁰³ In Maine, a respondent emphasized that a scientifically derived list was important to provide a “baseline” of information about the status of species. Only a slim majority of the states (54%) require the use of scientific evidence as the basis for listing or delisting a species, however.

Listing procedures vary in complexity. Typically, the state wildlife commission, agency, or division is empowered to make listing decisions, with at least two states, Montana and Maine, reserving final listing decisions for the state legislature.¹⁰⁴ Plant listings in Pennsylvania must be approved by an Environmental Quality Board.¹⁰⁵ North Carolina is another exception, permitting a species to be listed only after several

¹⁰² Tribal Court Clearinghouse, “Tribal Laws/Codes,” (n.d.).

¹⁰³ Kan. Stat. Ann. §32-960.

¹⁰⁴ Mont. Code Ann. §87-5-107; Me. Rev. Stat. Ann. 12 §7753.

¹⁰⁵ Pa. Stat. Ann. 32 §5307.

independent bodies have concurred - a Scientific Council, a Nongame Wildlife Advisory Committee, and the Wildlife Resources Commission.¹⁰⁶

In listing a species, 37 states adopt the federal list, along with species designated through the state process.

Several other provisions can be part of a comprehensive listing provision. For example, candidate or “species of special concern” can be a category in addition to endangered and threatened classifications, as an early warning system. The majority of states, including Arizona, California, and Maine, include subspecies in the definition of “species” in order to bolster the biological integrity of the listing designation. Emergency listing provisions, and a designation for a species that closely resembles a listed species can provide further protections. And allowing citizens to petition for listing provides a back-stop to ensure that species are reviewed for listing if and when the wildlife agency does not.

Finally, to be useful, a state’s list must be current. Seventeen states require that their list be updated regularly, ranging from annually (e.g, Florida) to every five years (e.g., Colorado). In Colorado, however, it has been approximately 25 years since the last update, which means that it does not provide the basis for protection for which it was intended. In Mississippi, the list is required to be revised every two years, but has not been updated since 2011. Tennessee is required to update its list every two years, but had not done so for 16 years until an audit highlighted the lack of action. And in Wisconsin, only eleven revisions have been made to the state list since 1970. Unfortunately, the lack of updated lists is a common trend, as agencies have struggled with declining budgets, staffing, and political backlash aimed at endangered species.

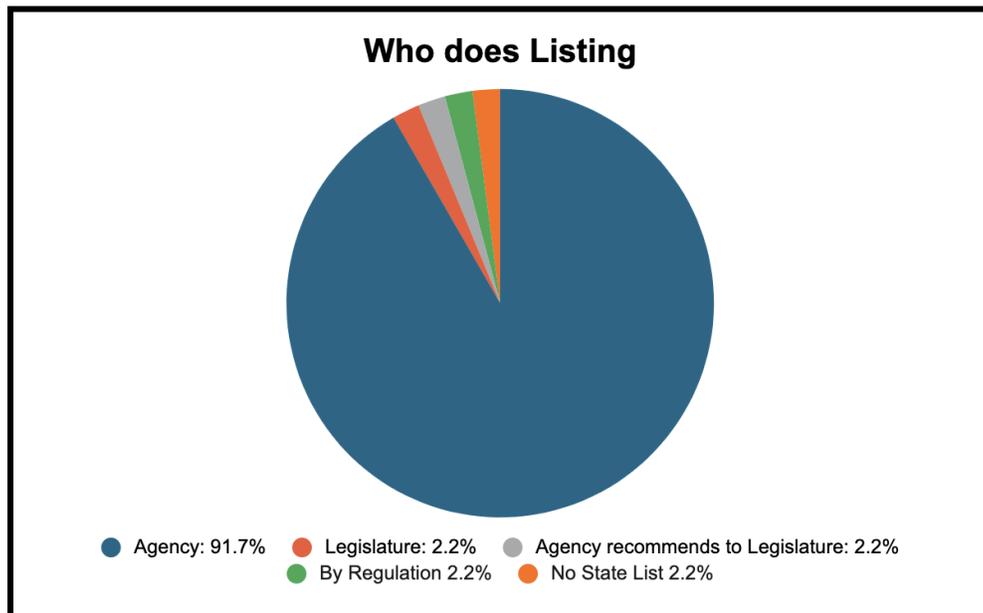


Figure 1: Entities authorized to create the list of state endangered and threatened species.

¹⁰⁶ N.C. Gen. Stat. §113-333.

Definition of Species

In addition to determining how to list a species, how states define “species” varies widely, from inclusion of all plants and animals, to mammals only. Only 18 states plus Puerto Rico provide protection to all plant and animal species.

Plants provide an example of the varying definitions of what constitutes a “species.” Thirty-one states plus Puerto Rico include plants in their definition of a species or protect plants in a separate statute, though plants typically receive far fewer legal protections, even when listed.

Traditionally, plants have received less protection than animals based on English and American common law traditions tying plants to the land as “attachments.” The federal ESA doesn’t ban collection of plants on private property unless state law specifically forbids the practice, so a state collection ban on private lands can provide significant protection for plants. In Nevada, for example, the state’s endangered plant statute prohibits take, and does not make an exception for private lands, as many other states do.¹⁰⁷ In Texas, by contrast, the statute doesn’t apply if take is “incidental” to private property or agriculture, so an endangered plant such as the Ashy Dogweed would not receive protection.¹⁰⁸

Invertebrates are another category of species that may or may not receive protection in a state act. Adding invertebrates to a state’s list would give it the ability to protect many pollinators which are threatened by disease, habitat loss, and pesticides, and upon which humans depend for the majority of our food.¹⁰⁹ Maine has already designated several invertebrates on its list of imperiled species, including the Katahdin Arctic butterfly.

Many state acts lack a definition of what constitutes a covered species, while others provide a broad definition, such as in Maine where “any species of the animal kingdom” may be listed.¹¹⁰ Pennsylvania has separate laws for wild birds and mammals, and fish.¹¹¹ Puerto Rico and Wisconsin include invertebrates as covered species in their laws.¹¹² Alaska limits its definition of species to include only vertebrates, and California excludes invertebrates; Pennsylvania excludes terrestrial invertebrates, but protects aquatic invertebrate species.¹¹³ An Attorney General opinion in Arizona found that invertebrates were not intended to be in the definition of wildlife.¹¹⁴ Most, however, don’t specifically mention invertebrates.

¹⁰⁷ Nev. Rev. Stat. Ann. §527.270.

¹⁰⁸ Tex. Parks and Wildlife Code Ann. §88.011.

¹⁰⁹ See “Species and Habitat Laws” section of this report.

¹¹⁰ Me. Rev. Stat. Ann. 12 §10001.

¹¹¹ Pa. Stat. Ann. 34 §2167, 30 §2305.

¹¹² P.R. Code Ann. 12 §107; Wis. Stat. Ann. §29.604.

¹¹³ Alaska Stat. §§16.20.095, .200; Cal. Fish and Game Code §2062; Pa. Stat. Ann. 30 §102, 34 §2167.

¹¹⁴ Az. AG Op. 74-26-§§L.

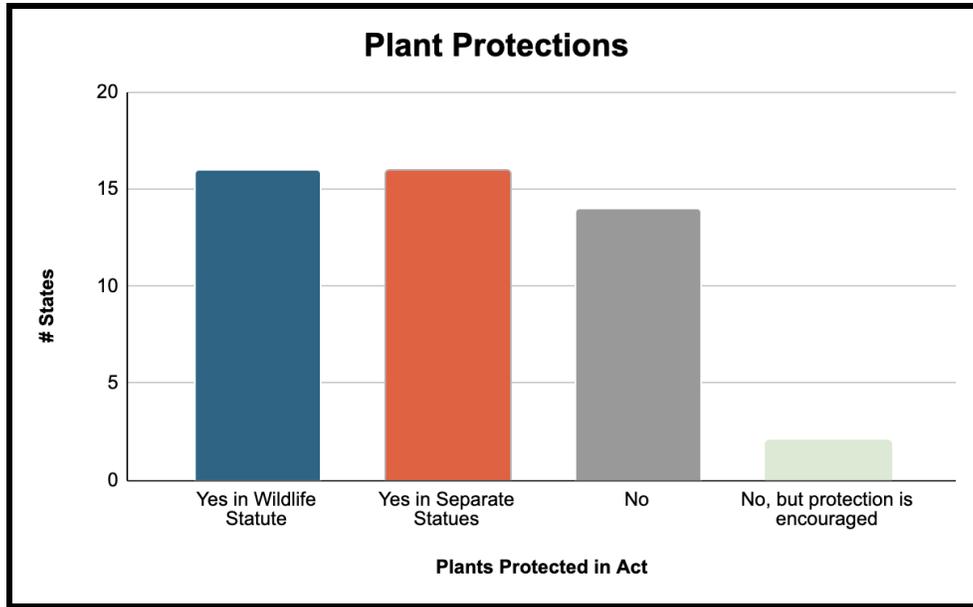


Figure 2: Presence of protections for threatened and endangered plant species in statute.

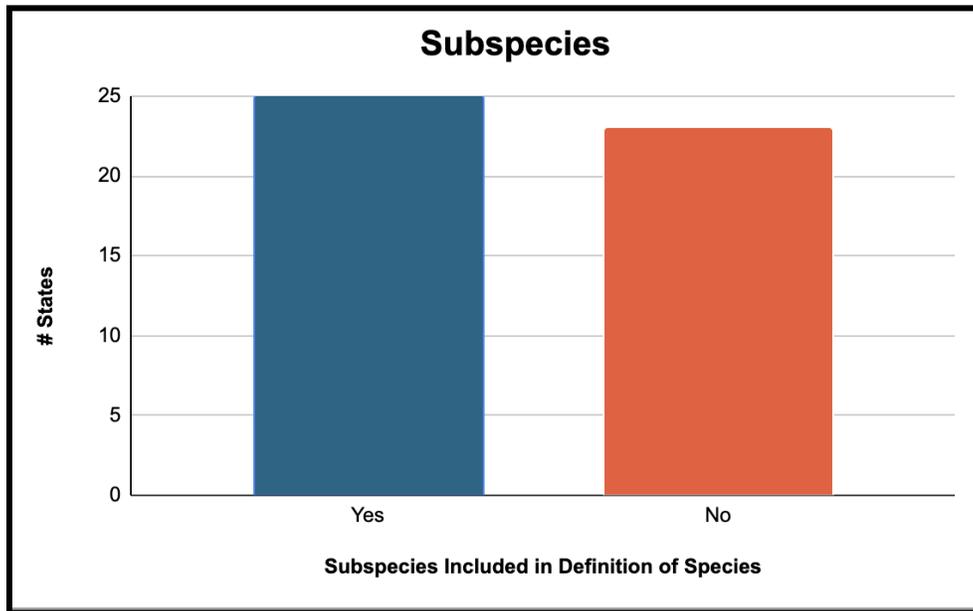


Figure 3: Subspecies either included or not included in a state's list of endangered and threatened species.

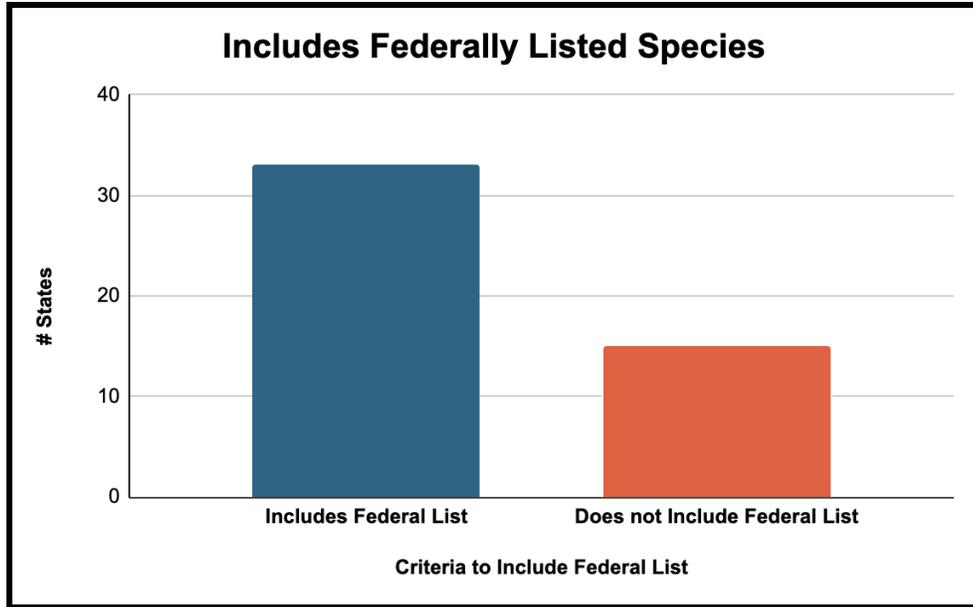


Figure 4: Requirement that federally listed species are included in state list.

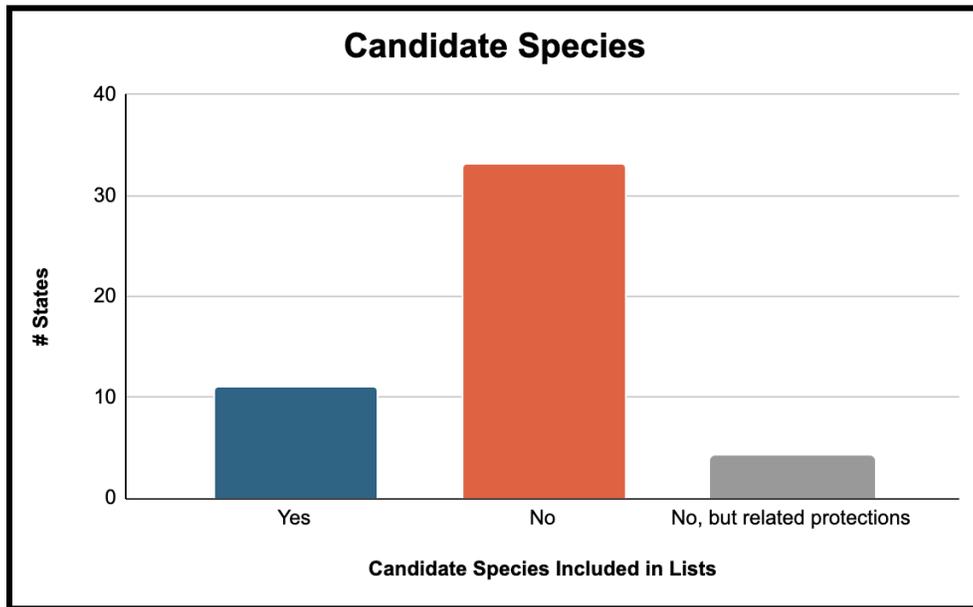


Figure 5: Candidate species either included or not included in a state's list of endangered and threatened species.

Case Study: Protecting Invertebrates - A “Little” Goes a Long Way

Pollinators are responsible for between \$235 and \$577 billion in crops produced worldwide, yet, many are on the [verge of extinction](#).¹¹⁵ This is equivalent to 30% of all agricultural productivity, or one in every three bites of food that people consume. Pollinating species like bees, birds, butterflies, bats, and other insects are declining rapidly due to a number of factors, including loss of habitat, loss of forage, and pesticides.



Photo Source: United States Fish and Wildlife Service

The Karner Blue Butterfly is perhaps one of America’s most striking Lepidoptera (moths and butterflies) species. The butterfly’s historic range once continuously stretched across the Northeast to the Upper-Midwest states and Canada along the Great Lakes. Its populations have declined by nearly 90% since 1994 and it is now restricted to pockets of habitat in New Hampshire, [New York](#), Michigan, Wisconsin and Ohio.¹¹⁶

Fortunately, there is good news for this imperiled beauty. A conversation with agency staff from the Wisconsin Department of Natural Resources revealed that their efforts with Habitat Conservation Plans (HCPs) have been instrumental in recovering the species in the state. The HCPs resulted in a public private partnership between state agencies, private landowners, and utility companies to devise timber harvesting methods that both contributed to economic development and benefited the butterfly. Today, Wisconsin hosts the most expansive population of the Karner’s blue butterfly in the country.¹¹⁷

This was Wisconsin’s first HCP and its success provides a model that the agency believes can be successful in future species conservation projects. However, HCPs are often seen as a time and resource intensive effort to create, demonstrating that there is a need to streamline the process to allow for more HCPs to be developed to recover even more species.

¹¹⁵ S.G. Potts, V.L. Imperatriz-Fonseca, and H.T. Ngo, “The assessment report of the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services on pollinators, pollination and food production,” *Zenodo*, IPBES (2016).

¹¹⁶ New York State Dept. of Environmental Conservation, “Species Status Assessment: Blue Karner Butterfly” (n.d.).

¹¹⁷ Wisconsin Department of Natural Resources, “Wisconsin Karner Blue Butterfly Habitat Conservation Plan and Environmental Impact Statement,” (1999).

Prohibitions

Once a species has been listed, all states with state endangered species laws prohibit certain actions, such as taking, importing, exporting, possessing, transporting, or selling state-listed species. Restrictions on take, plus these commercial activities, are prohibited in 42 states plus Puerto Rico. The graph below shows the various prohibitions utilized in state laws.

The definition of “take” varies widely, however, from the direct killing of a listed species to harming the habitat upon which the species depends, harassment, or interfering with breeding behaviors. Because take definitions originally arose from hunting, fishing, and trapping laws, they have historically focused on the individual killing, injuring, or capturing of a species.¹¹⁸ Alaska follows this historical view, defining the term to include only harvesting, injuring, or capturing a listed species, along with the import or export of the species.¹¹⁹ North Carolina also narrowly defines take in terms of hunting and fishing.¹²⁰

The increased awareness of the effects of indirect acts on a species' viability, however, has led to broader definitions in some states. In New York, the state's act defines “take” as including “lesser acts” such as disturbing, harrying, or worrying, which the highest court found to include habitat modification.¹²¹ Massachusetts, as another example, prohibits harassment, as well as the disruption of nesting, feeding, or breeding behaviors, in addition to direct take.¹²² Massachusetts is also notably the only state to explicitly prohibit habitat destruction by stating that “no person may alter significant habitat.”¹²³

Most state agencies agree that including these types of indirect harm are vital to improving protection efforts, as direct take is simply a “finger in the dam” until habitat is protected. With habitat loss as the leading cause of species decline, provisions such as those found in Massachusetts and the federal ESA are critical to elevating the ability of states to protect the wildlife within their borders.¹²⁴

Also important is applying any prohibitions to both public and private lands. In some states, such as Connecticut, the prohibitions apply on private lands only when the take is “willful,” with full take applying solely on public lands, which only account for 2% of the state.¹²⁵ Massachusetts stands out by restricting private land activities where they occur on land designated as “significant habitat.”¹²⁶ With

¹¹⁸ 2 W. Blackstone, Commentaries 411 (1766) (“Every man...has an equal right of pursuing and taking to his own use all such creatures as are *ferae naturae*”).

¹¹⁹ Alaska Stat. §16.20.180.

¹²⁰ N.C. Stat. §113-130.

¹²¹ *State v. Sour Mountain Realty, Inc.*, 276 A.D. 2d 8 (2000) (construction of a snake-proof fence constituted a “take” of the timber rattlesnake, a state-listed threatened species); but see, *Animal Rights Front v. Jacques*, 869 A.2d 679 (2005) (subdivision was “incidental take” of endangered timber rattlesnake habitat and not unreasonable under the Connecticut Environmental Protection Act).

¹²² Mass. Gen. Law Ann. 131A §1.

¹²³ Mass. Gen. Law Ann. 131A §2.

¹²⁴ Not surprisingly, the interpretation of take prohibitions has landed in the courts. See, e.g., *Dept. of Fish and Game v. Anderson-Cottonwood Irrigation District*, 11 Cal. Repr. 2d 222 (1992).

¹²⁵ Conn. Gen. Stat. Ann. §26-311.

¹²⁶ Mass. Gen. Law Ann. 131A §5.

80% of endangered species found on private lands, the [importance of regulation](#) on these lands is clear.¹²⁷

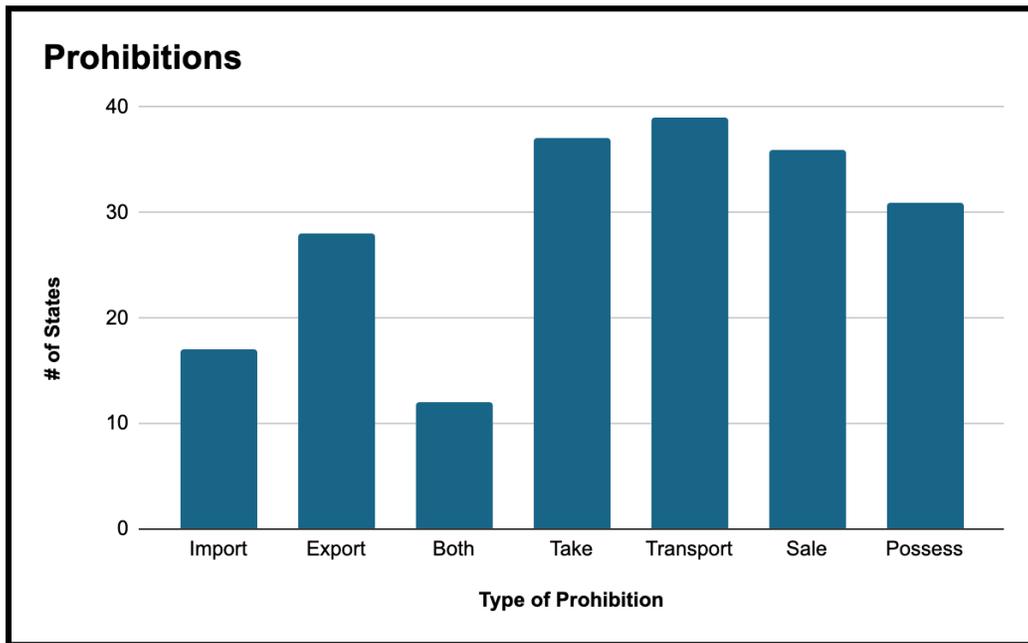


Figure 6: Presence of prohibitions regarding state listed species in statute.

Penalties and Enforcement

State endangered species laws are no exception to the adage that a law must be enforced in order to be effective. Penalties can include civil and criminal fines, jail time, forfeiture and/or restoration orders. Criminal penalties can range from misdemeanors to felonies, and can include stiffer penalties for knowing violations and lesser penalties for other offenses. The imposition of damages to restore habitat or replace a member of the species is another possibility.

Most state endangered species laws provide for penalties for violations, though they vary widely across the country. In Minnesota, for example, violation of the state’s provisions constitutes a misdemeanor, with fines up to \$700 and/or 90 days imprisonment,¹²⁸ whereas in Massachusetts, penalties can go as high as \$10,000 and imprisonment of up to 180 days.¹²⁹ Puerto Rico’s penalties for violations range from \$5,000 to \$50,000, and require imprisonment of not less than 90 days, up to three years.¹³⁰ Some states, such as Oklahoma, authorize the seizure and forfeiture of property used as an aid in violation of any

¹²⁷ Lowell Baier, “Saving Species on Private Lands,” Property and Environment Research Center, (6 May 2020).

¹²⁸ Minn. Stat. Ann. §84.0895(9).

¹²⁹ Mass. Gen. Laws Ann. 131A §4.

¹³⁰ P.R. Code Ann. 12 §107t.

provision of the state's endangered species law.¹³¹ Texas authorizes civil suits for injunctive relief against any state or local agency that violates its endangered plant laws.¹³²

Even in states with high penalties, however, enforcement does not always occur. In Colorado, for example, penalties can reach as high as \$100,000,¹³³ but to date, no one has ever been prosecuted under the act, according to respondents. And in other states, such as Maryland, enforcement efforts have focused on safety-related crimes such as arresting intoxicated boaters, not on enforcing endangered species laws. In New Jersey, enforcement efforts are needed to stem the illegal turtle trade, but these efforts are still in an early phase. In New York, penalties are seen as "fairly lax," making enforcement a lower priority. Enforcement of plant protection laws can be even more difficult, as law enforcement may see violations as a "low priority" according to one respondent.

One way to aid enforcement efforts is by giving citizens the ability to enforce the law. Hawaii authorizes citizens to bring a civil suit as a "private attorney general" for violations of a habitat conservation plan or safe harbor agreement.¹³⁴ Yet no other state endangered species law gives citizens the ability to sue to enforce its provisions, unlike the federal ESA and some other federal and state environmental statutes.¹³⁵ Without citizen standing, enforcement is left to state wildlife agencies, which tend to have insufficient personnel and funding to bring environmental suits. Standing may sometimes be inferred under other state laws,¹³⁶ and a state's constitution can also confer standing to sue for environmental law violations, but the language must clearly include wildlife.¹³⁷ Thus, a citizen suit provision in a state's endangered species laws or act can be an important tool to assist in enforcement.

Consultation

Consultation provisions are hailed by many state agencies as a very effective tool for managing development projects that may impact listed species. Under these provisions, any state agency must consult with the wildlife agency on actions funded, permitted, licensed, carried out, or authorized by the state that may impact or affect the recovery of a listed species. If a state agency action is found to jeopardize a listed species or would adversely modify its habitat, reasonable and prudent alternatives can be specified, or an incidental take permit can be issued under certain circumstances. As one state respondent noted, consultation is a way for all state agencies to show that "we're all looking out for species."

¹³¹ Okla. Stat. Ann. 29 §5-412.

¹³² Tex. Parks and Wildlife Code Ann. §88.012.

¹³³ Colo. Rev. Stat. §33-6-109.

¹³⁴ Haw. Rev. Stat. Ann. §195D-32.

¹³⁵ The standing provision in the Endangered Species Act is found at 16 U.S.C. §1540(g); a similar provision can be found in Washington state's administrative code at Wash. Admin. Code §34.05.530. See, [Center for Biological Diversity v. Department of Fish and Wildlife](#), 474 P. 3d 1107 (2020) (environmental organization had standing to sue regarding bear hunting under regulation giving citizens standing to sue the agency).

¹³⁶ See, [New Jersey Pinelands Commission](#), 812 A. 2d 1113 (2003) (citizen could have standing to sue under state's Environmental Rights Act if "inadequate enforcement of environmental laws" occurred).

¹³⁷ See, [Glisson v. City of Marion](#), 720 N.E. 2d 1034 (1999) (Illinois constitution, which gives standing to citizens to promote a "healthy environment" does not include wildlife).

Only 18% of states plus Puerto Rico have laws requiring consultation with the expert wildlife agency on state-level projects, however. Wisconsin is one such state, where state agencies must “alleviate, to the maximum extent practicable under the circumstances, any potential adverse effect” on state-listed species.¹³⁸ Massachusetts requires state agencies to “use all practicable means and measures to avoid or minimize damage” to state-listed species.¹³⁹ Puerto Rico requires government agencies to consult on any action with a “foreseeable and significant impact” on listed species.¹⁴⁰ A respondent in South Dakota noted that such mandatory coordination with other state agencies would be extremely useful if the state is to achieve “meaningful protection.”

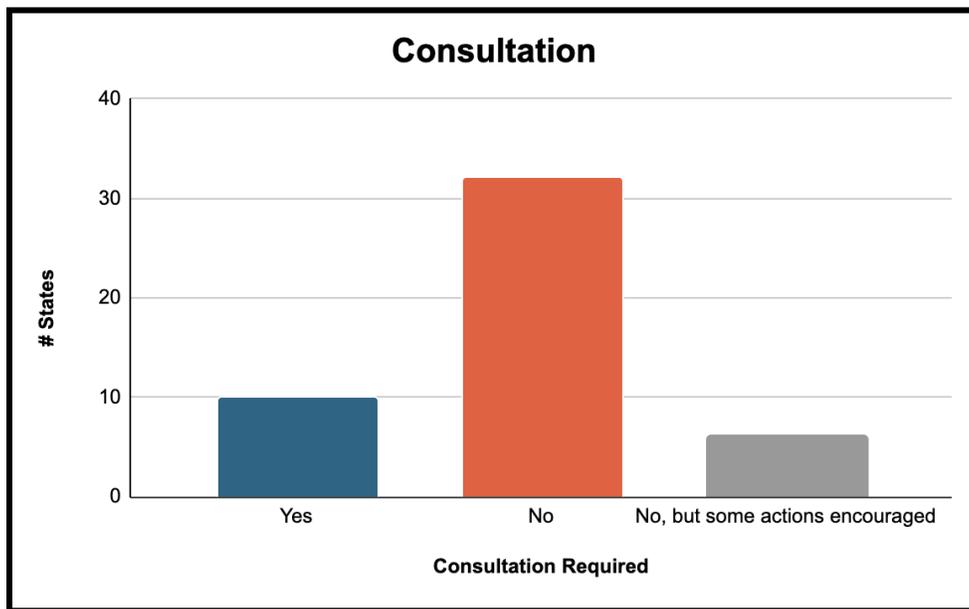


Figure 7: Presence of consultation requirement with the wildlife agency in state statute.

Critical Habitat

Because habitat loss and fragmentation are [the greatest threats](#) to biodiversity worldwide,¹⁴¹ the designation of critical habitat for a listed species, or that habitat deemed as necessary to a species’ survival and recovery, can be of significant value. Even though such a designation only impacts government entities and does not affect private landowners unless they are applying for a federal or state permit,¹⁴² critical habitat requirements are rare. As with recovery plans, even when critical habitat designations are required, they are sometimes not made due to political sensitivities; one respondent said that such designations “make people nervous” so they aren’t done.

¹³⁸ Wis. Stat. Ann. §29.604.

¹³⁹ Mass. Gen. Law Ann. 131A §4.

¹⁴⁰ P.R. Code Ann. 12 §107a.

¹⁴¹ Habitat loss is identified as a main threat to 85% of all species on the International Union for Conservation of Nature and Natural Resources Red List; see <https://www.iucnredlist.org/>.

¹⁴² Many of the private landowner incentives offered by states are geared toward habitat protection, however. See “Private Landowner Incentives” section of this report for more information.

Only eight states plus Puerto Rico require the designation of critical habitat, while four states authorize but don't mandate it. Vermont was the most recent state to add critical habitat authority to its state endangered species laws,¹⁴³ with the first designation approved in January of 2022. In Maine, critical habitat designations are not required, but the Commissioner of Inland Fisheries and Wildlife has the authority to make such designations, deemed "essential habitat".¹⁴⁴ Some states, such as Massachusetts, designate "survival habitat" at the time of listing, giving immediate protection to species habitat, which is then revised and finalized as "critical habitat" when a recovery plan is adopted.¹⁴⁵ In Massachusetts, the designation of survival habitat is based only on biological factors, while economic impact and other factors can be considered when designating critical habitat. Puerto Rico not only designates "critical natural habitat" but also states that its policy is the "protection of all wildlife and in particular the natural habitat of said species."¹⁴⁶

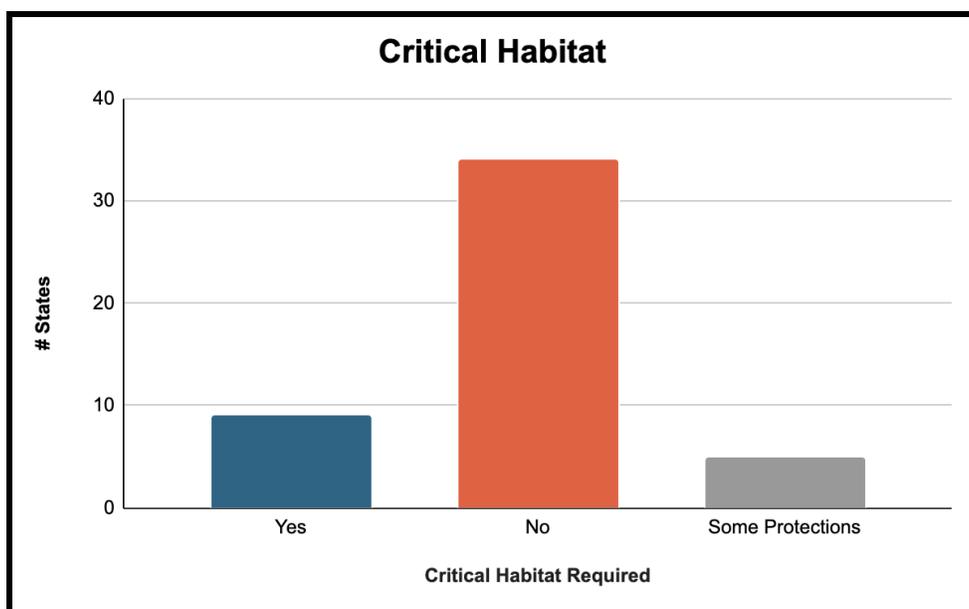


Figure 8: Presence of critical habitat requirement in state statute.

Habitat Acquisition

Even if a state doesn't have critical habitat requirements, the majority of states authorize habitat acquisition. Thirty-one states plus Puerto Rico have statutory authority to acquire habitat for threatened and endangered species. This [authority is critical](#),¹⁴⁷ as habitats from tall-grass prairie to wetlands and old-growth forests have been [reduced to a fraction](#) of their former habitat.¹⁴⁸ Protecting intact habitat

¹⁴³ Vt. Stat. Ann. 10 §5402(a).

¹⁴⁴ Me. Rev. Stat. Ann. 12 §12804.

¹⁴⁵ Mass. Gen. Law Ann. 131A §4.

¹⁴⁶ P.R. Code Ann. 12 §107a.

¹⁴⁷ Ilkka Hanski, "Habitat loss, the dynamics of biodiversity, and a perspective on conservation," *Ambio* vol. 40,3 (2011).

¹⁴⁸ *Id.*; Kate Burgess & Ruth Musgrave, "Endangered Species," National Caucus of Environmental Legislators (2019).

was named by respondents as one of the top methods to help conserve listed species, as well as to prevent further listings by providing resiliency to wildlife that are stressed by climate change impacts.

Several respondents noted the importance of moving beyond single-species management to focus more on habitat and landscape-scale protections, from watersheds to forests and grasslands. A staffer in Maryland said that “functional ecosystems” are needed to protect wildlife, including habitat connectivity, especially as climate change puts significant stress on species.¹⁴⁹

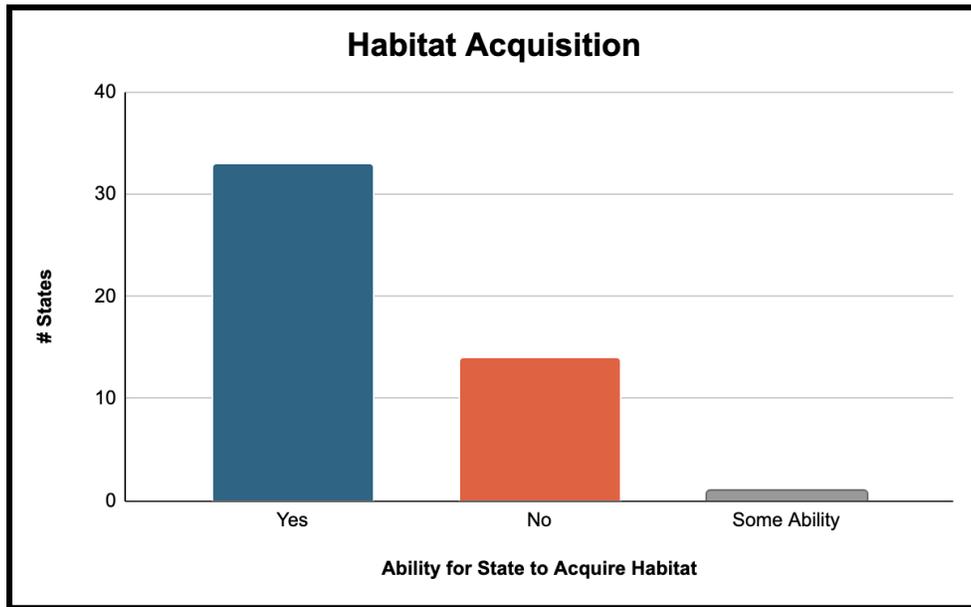


Figure 9: Ability of the state wildlife agency to purchase habitat under state statute.

Recovery Plans

Recovering a species so that it can be de-listed seems an obvious goal in endangered species protection, but in most cases survival, rather than recovery, is the central focus. As one respondent noted, recovery planning would be ideal, but is “not realistic” given staffing and funding levels.

Only three states - Kansas, North Carolina, and New Mexico - require recovery plans, though not every species has a plan in place, due in large part to costs - both staff time and dollars - needed to craft and implement these plans. North Carolina, for example, requires recovery plans, but there is a backlog, as many years went by without any plans being developed. New Mexico requires the development of a recovery plan “to the extent practicable;”¹⁵⁰ Kansas uses a priority ranking system for its listed species, but recovery plans are not “fully done.” Of the three states with requirements for recovery plans, only New Mexico establishes deadlines for developing a plan.

¹⁴⁹ See “Wildlife Connectivity” section of this report.

¹⁵⁰ N.M. Stat. Ann. §17-2-40.1.

Many other state laws authorize, but don't require recovery plans. In New Hampshire, for example, formal recovery plans aren't required, but significant funding goes toward recovery. Vermont drafts a recovery plan for species once they are listed, even though there is no statutory requirement for such a plan. Oregon requires that "guidelines" be set to ensure the survival of a listed species, although recovery is not required.¹⁵¹ Even if recovery planning is authorized, however, in some states such recovery planning is "hit and miss" depending on staffing and resources.

In states with no requirements or authorization, other measures can be taken. South Dakota, for example, is working toward developing de-listing criteria for all listed species, and implementation of the criteria goes to species recovery when staff and data are available. New Jersey does not have a statutory recovery requirement, but tries to prioritize recovery efforts based on species that are most likely to recover rather than those that are the most imperiled. Without such efforts or mandate, however, the state role is limited to, at best, mitigating impacts, or at worst, simply documenting the decline and possible extinction of a species, what one respondent called the "trajectory of decline."

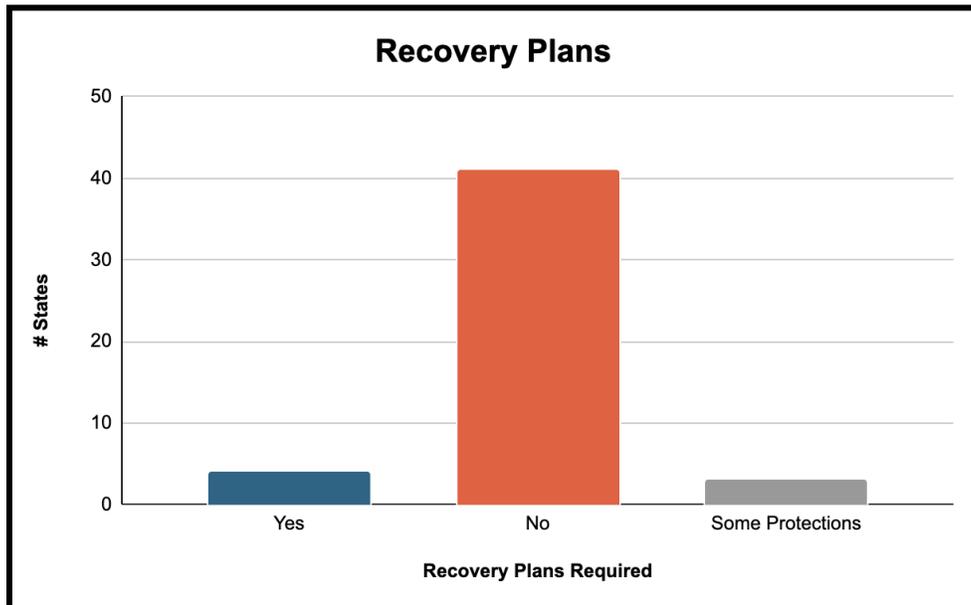


Figure 10: Presence of recovery plan requirements in state statute.

Permits and Incidental Take

Most state laws authorize state wildlife agencies to issue permits authorizing take in a limited number of circumstances. These permits are typically for scientific, educational, and zoological purposes, as well as for the propagation in captivity of a species. Other states authorize take to protect human health, or in some states, such as South Carolina, no permit is required in emergency situations involving an immediate threat to human life.¹⁵²

¹⁵¹ Or. Rev. Stat. Ann. §496.182.

¹⁵² S.C. Code Ann. §50-15-50.

A few states also authorize “incidental take” permits for state agencies and private landowners, allowing take through a regulatory process, if an acceptable mitigation plan can be crafted. For example, Illinois has an incidental take permit process that requires a conservation plan from applicants, similar to the federal program.¹⁵³ Maine authorizes incidental take permits for specific and “widespread” activities, so long as an approved plan is in place that minimizes the incidental taking of the species.¹⁵⁴ These permits provide an incentive to landowners, while attempting to prevent harm to the species. Wisconsin’s incidental take permits closely track the federal ESA by requiring a habitat conservation plan, minimization of takings impacts, assurance of adequate funding, and consultation thresholds.¹⁵⁵

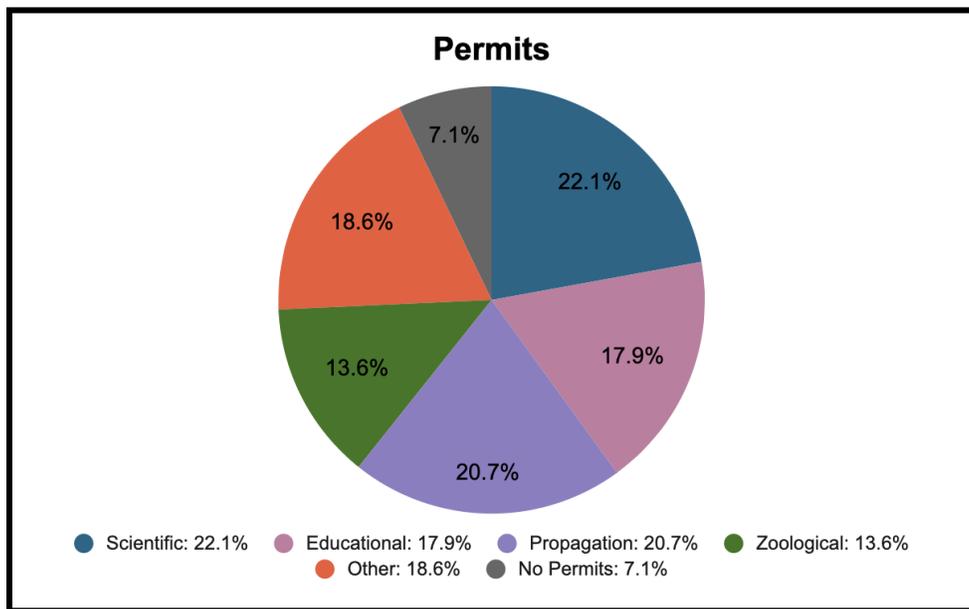


Figure 11: Presence of scientific, educational, zoological, propagation, or other permits included in state statute.

¹⁵³ Ill. Ann. Stat. 520 §10/5.5.

¹⁵⁴ Me. Rev. Stat. Ann. 12 §12808-A.

¹⁵⁵ Wis. Stat. Ann. §29.604.

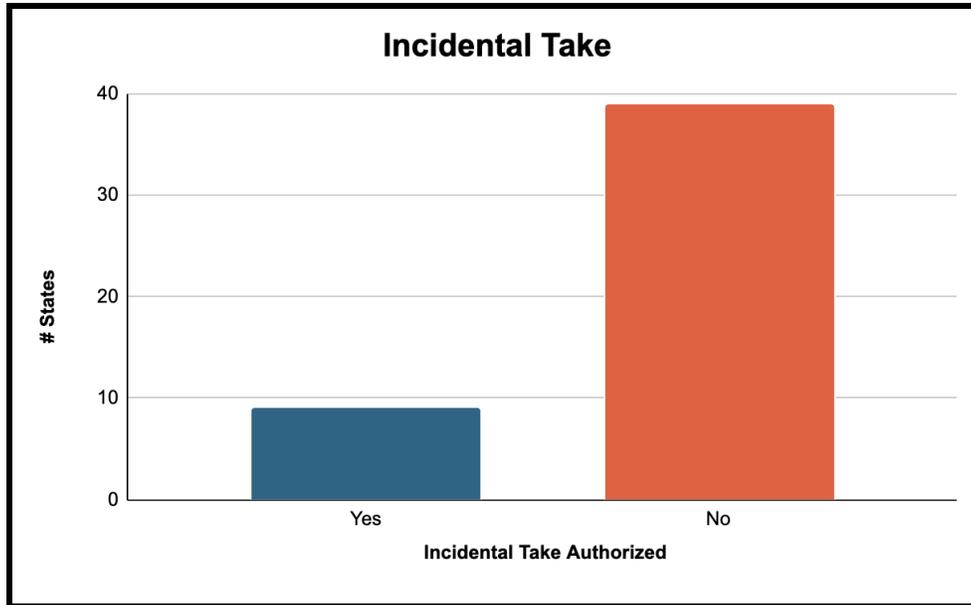


Figure 12: Presence of incidental take permits for state listed species in statute.

Private Landowner Incentives

One promising addition to several state endangered species laws are private landowner incentives, ranging from relaxed statutory requirements to financial payments and tax credits. With two-thirds of the United States in private ownership, partnerships with and incentives for these landowners can help engage a broader spectrum of the public in conservation efforts. As one respondent said, these incentives help landowners “feel proud” to have threatened and endangered species on their land. Another noted that, in a state that is 98% privately owned, “any progress has to rely on landowners.” A third remarked: “If we had the feasibility of giving landowners incentives, I think that would be perfect.”

Case Study: Landowner Incentives - Kansas Leads the Way

Kansas was the first state to incorporate landowner incentives into its endangered species act. The result of a task force created by the legislature, the 1997 law allowed both property and income tax credits to taxpayers whose property is designated as critical habitat and is included in management activities as part of a recovery plan or conservation agreement. Although that provision has since sunset, it was widely supported by groups across the state, including the Farm Bureau. Today, Kansas law authorizes prelisting, safe harbor, and no take agreements.¹⁵⁶

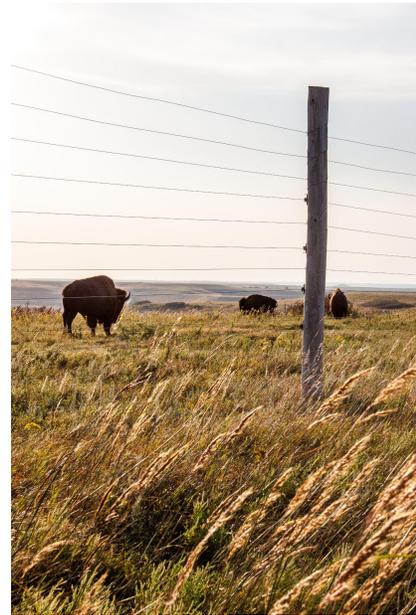


Photo Source: Mary Hommel

Hawaii, for example, has several landowner incentives in its endangered species legislation. The provisions offer habitat conservation plans, safe harbor agreements, and incentives for landowners to voluntarily engage in efforts to protect listed species.¹⁵⁷ California authorizes safe harbor agreements and habitat conservation plans.¹⁵⁸ And in South Carolina, "certified management areas" can qualify landowners for income tax credit.¹⁵⁹

Even if a state doesn't have private landowner incentives in their endangered species laws, these provisions can be found in other parts of their statutes, such as in the tax code. In North Carolina, for example, a Wildlife Conservation Land Program, found in the tax code, gives a tax break to landowners for conserving habitat for rare species.¹⁶⁰ Washington passed a law exempting improvements to fish and wildlife habitat from taxation, to encourage private property owners to make voluntary improvements to their property without the penalty of paying higher property taxes.¹⁶¹ And Texas has a [Landowner Incentive Program](#) that pays landowners to help conserve threatened or endangered species on their property, giving landowners up to \$10,000 for restoring native vegetation and fencing sensitive areas, with bonuses paid when rare species increase.¹⁶²

Endangered species get a huge benefit when private lands are part of a conservation strategy. A [recent study](#) found that protecting America's undeveloped, privately held lands could push all of the country's

¹⁵⁶ Kan. Stat. Ann. §32-962.

¹⁵⁷ Haw. Rev. Stat. Ann. §§195D-21, -22, -23.

¹⁵⁸ Cal. Fish and Game Code §§2089.2 - .26, 2800-2835.

¹⁵⁹ S.C. Code Ann. §50-15-50.

¹⁶⁰ N.C. Gen. Stat. §105-277.15.

¹⁶¹ Wash. Rev. Code Ann. §84.36.255.

¹⁶² Texas Parks and Wildlife, "Landowner Incentive Program," n.d.

endangered mammals, birds, amphibians and reptiles past a crucial habitat threshold.¹⁶³ In Oklahoma, for example, which is 96% privately owned, private landowner incentives such as conservation easement funding and grants for habitat improvements were emphasized by a staffer as an important tool needed to move protection efforts forward.

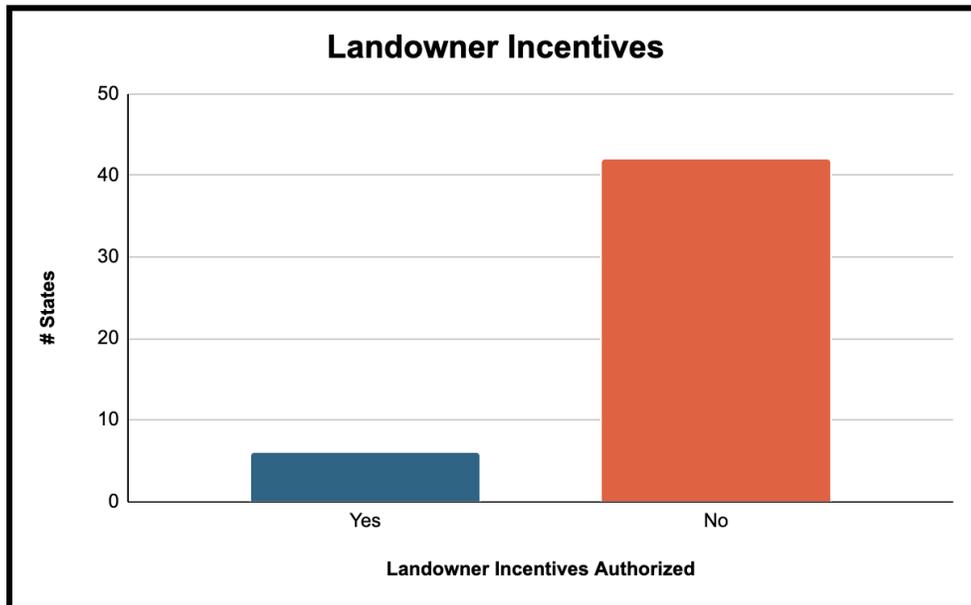


Figure 13: Presence of landowner incentives for state listed species in state statute.

Recent Efforts

Efforts to improve (and sometimes weaken) state endangered species laws are being made each year across the country, some of which have met with success. In 2021, New York amended its state law on penalties for endangered species law violations, doubling the previous amount of the violation.¹⁶⁴ Florida attempted to increase protections for both plant and animal listed species, though the bills died in committee in 2022.¹⁶⁵ One bill in New Jersey is in play in 2022 to increase protections for threatened and endangered plant species,¹⁶⁶ while another would remove any plant deemed “invasive” from its list.¹⁶⁷ A 2019 effort in Maine repealed endangered plant protections, leaving an “informational only” plant list in place.¹⁶⁸ Hawaii recently passed two endangered species bills, one requiring all habitat conservation plan participants to provide rehabilitation services to impacted native species,¹⁶⁹ and another that funds an

¹⁶³ Clancy, N.G., Draper, J.P., Wolf, J.M. *et al.*, “Protecting endangered species in the USA requires both public and private land conservation,” *Sci Rep* 10, 11925 (2020).

¹⁶⁴ N.Y. SB 4866 (2021).

¹⁶⁵ Fl. SB 238, HB 711 (2021).

¹⁶⁶ N.J. A.1997 (2022).

¹⁶⁷ N.J. A.3616 (2022).

¹⁶⁸ Me. Rev. Stat. Ann. §544-B.

¹⁶⁹ Haw. SB 573 (2022).

initiative to aid recovery efforts for endangered species.¹⁷⁰ [NCEL tracks these efforts](#) so that bill language, sponsors, and bill status are readily available.¹⁷¹

Challenges

Of course, state laws do not always result in a species' recovery. Challenges such as climate change, invasive species, development, a lack of funding, and the ever-shifting political winds can make species protection an uphill battle. In Kansas, for example, climate change has made surface waters too warm for certain mussels, so the only action the state can take is to "document the last of the species." Other respondents noted that, while stronger state laws were needed, there was hesitancy to open up the state law because of concern that a "vocal minority" would try to gut the law. These challenges mean that, in addition to strong state endangered species provisions, more needs to be done to bolster wildlife protection, from funding to incentives, education, and outreach.

¹⁷⁰ Haw. SB 2070 (2022).

¹⁷¹ Kate Burgess, Ruth Musgrave & Justin Gulino, "Endangered Species," National Caucus of Environmental Legislators, (2019).

What's Needed Outside of Stronger State Endangered Species Laws?

“Instead of doing the proactive work that is necessary to maintain healthy wildlife populations on the front end, states have been forced into using reactive measures to rescue species after they are listed as threatened or endangered. Funding can change that.”

U.S. Senator Martin Heinrich

Funding

Current Sources

Aside from the need for stronger legislation, a lack of funding is the one critical impediment that is preventing state wildlife agencies across the board from achieving greater success. Several states noted that even if their state laws were strengthened, they would not have the staff or other resources to implement new requirements without additional funding. Others said that their agency did not prioritize endangered and threatened species because the funding comes from hunting and fishing revenues, highlighting the need for a larger and broader pool of funding than the states currently have.¹⁷²

States currently use a variety of sources to fund conservation efforts, including federal dollars from ESA Section 6 agreements and hunting/fishing revenues from the Pittman-Robertson Aid in Wildlife Restoration and Dingell-Johnson Aid in Fish Restoration Acts,¹⁷³ plus State Wildlife Grant monies. The most common sources include legislative appropriations and income from hunting tags and fishing licenses, although innovative ideas are found throughout the states.

Revenue from real estate transfer taxes, wildlife license plates, lottery revenues, and sales taxes have generated money for endangered species programs. Illinois currently funds its program in part with a recordation tax on all transfers of realty. The Great Outdoors Colorado Program, established by the legislature in 1993, mandates the protection of crucial wildlife habitats with funding from the state lottery. Minnesota helps fund rare species protection through their own Environment and Natural Resources Trust Fund that utilizes state lottery dollars, as well as through the Minnesota Outdoor Heritage Fund, which provides extra support for species conservation initiatives. New Jersey has an Endangered Wildlife Fund tax check-off, and Missouri uses a 1/8 cent sales tax that has provided long-term funding for conservation.

Yet the financial need remains high. Many states can only focus on a limited number of species of greatest conservation need, as available federal funds cover only [5%](#) of projected need, and state funding provides partial, but often insufficient resources.¹⁷⁴ As one state agency staffer noted, “We can’t get species off the list if we don’t have the resources.”

¹⁷² See “State Agency Reform” section of this report.

¹⁷³ 16 U.S.C. §§669-669i; 16 U.S.C. §§77-777l.

¹⁷⁴ It is estimated that there is currently a \$1.2 billion shortfall in State Wildlife Grant monies.

Recovering America’s Wildlife Act

The federal Recovering America’s Wildlife Act (RAWA), which failed to pass Congress in December 2022, would have helped reverse this problem by providing funding to states to protect nongame wildlife. Had it passed, states, territories, and tribal governments would have received increases to their wildlife management funding based on their size, population, and the number of species listed as endangered or threatened under the federal Endangered Species Act. And these increases would have been substantial, such as the expected \$14.6 million portion for South Dakota, \$10 million for Vermont and New Hampshire, and more than \$50 million for California. Only 25% of these federal funds would have required a match by the states.

RAWA would have amended the [Pittman-Robertson Wildlife Restoration Act](#) of 1937 to provide states and tribes with \$1.397 billion dollars in annual dedicated funding to implement their federally approved State Wildlife Action Plan.¹⁷⁵ This would have enabled state and tribal wildlife agencies to implement proactive and voluntary conservation measures to address America’s wildlife crisis, empowering wildlife agencies throughout the country. One of the most significant aspects of the bill is that a minimum of 15% of these funds would have been dedicated to protecting federal or state endangered and threatened species, candidate species, and species proposed for listing.

Before Congress voted on RAWA, state agency respondents, without exception, expressed their high hopes for the bill, with many saying that it would have been a “game changer,” and “transformative” for endangered species protection in their state. A respondent in North Dakota said it well: “We need RAWA to pass so that we can make a dent in recovering these species and keeping them off the list [of endangered and threatened species].”

For most states, RAWA would have also meant an increase in basic monitoring and data collection, the first step in determining whether a species needs protection. In Arizona, for example, RAWA would have added \$30 million annually to a state with only three biologists on staff, where there is an “open season” on most species until or unless the state determines that a species is declining. In Connecticut, the state has only one botanist, with 330 listed plant species needing protection.¹⁷⁶ Florida noted that they are “stretched too thin,” resulting in a “capacity gap.” In Louisiana, one respondent said that their data is so insufficient that they “don’t even know what species have been lost.”

Other states would have been able to expand their protection efforts to include currently unprotected species. Hawaii emphasized the need for more resources, especially for invertebrates, which are not receiving the needed protection. Kansas, Maryland, and Vermont expressed interest in adding plant protections to their laws, but they first needed the resources that RAWA would have provided. And in

¹⁷⁵ 16 U.S.C. §669 et seq.

¹⁷⁶ CT Department of Energy and Environmental Protection, “Endangered, Threatened, and Special Concern Plants,” (5 Aug 2015).

New Mexico, species such as the Gila monster, bighorn sheep, and the Texas hornshell mussel would have received much-needed protection.¹⁷⁷

While RAWA did not pass, the future of the bill is uncertain. Hundreds of organizations, Tribal Nations, and elected officials from across the country expressed strong support for the bill, so a similar measure may be proposed again in the future. For now, however, states will need to find other funding sources for conserving the thousands of species of greatest conservation need that are found within their borders.

Land and Water Conservation Fund

[The Land and Water Conservation Fund](#) (LWCF) was established by Congress in 1964 to “safeguard natural areas, water resources and cultural heritage, and to provide recreation opportunities.”¹⁷⁸ The fund, which uses earnings from offshore oil and gas leasing, allows for land acquisitions that benefit species. In 2020, the [Great American Outdoors Act \(GAOA\)](#) was signed into law, authorizing \$900 million annually in permanent funding for LWCF.¹⁷⁹ Prior to the passage of GAOA, funding for LWCF relied on annual Congressional appropriations.

Inflation Reduction Act

[The Inflation Reduction Act](#)¹⁸⁰ (passed in 2022) provides significant funding opportunities for states and tribes to address conservation issues. These opportunities range from wildlife conservation and wildlife corridors, to state forestry conservation programs, drought mitigation, investments in coastal communities, and [several other protections](#).¹⁸¹ The billions of dollars in funding from this Act provide unprecedented federal resources in the fight against climate change.

Other State Laws

As with state endangered species laws, other laws and policies at the state level can provide an important level of protection for wildlife. These laws range from biodiversity initiatives, to environmental impact reviews, and constitutional provisions that declare a citizen’s right to natural resources.¹⁸²

State Biodiversity Policies

Statewide biodiversity policies, though rare, highlight the importance of biodiversity conservation. New York, for example, established a Biodiversity Research Institute by statute in 1993 to coordinate state and

¹⁷⁷ “New Mexico U.S. Senator Aims to Support Wildlife”, Carlsbad Current-Argus, April 13, 2022.

¹⁷⁸ DOI, “Land and Water Conservation Fund,” (n.d.).

¹⁷⁹ 54 U.S.C. §§200302, 200303, 200306

¹⁸⁰ H.R. 5376 (2022).

¹⁸¹ Joel Stronberg. “The Inflation Reduction Act is a new lease on U.S. climate policy: Let’s not screw it up” Climate Change Resources (16 Sep 2022).

¹⁸² For an overview of these laws, see *Saving Biodiversity: A Status Report on State Laws, Policies and Programs*. Center for Wildlife Law and Defenders of Wildlife, July 1996.

private efforts to identify and understand the state’s plants, animals, and environments.¹⁸³ [North Carolina’s Biodiversity Project](#) works to provide detailed information about species’ conservation status.¹⁸⁴ Information gained about biodiversity can be used to direct future development away from “hot spots” and prevent further losses.

Little NEPAs

More than a dozen states have “little NEPAs,” modeled in part after the federal National Environmental Policy Act, requiring environmental impact assessment of certain state agency actions. Hawaii’s environmental impact law, for example, requires the review of state and county actions that impact biodiversity, and the development of alternatives to minimize or mitigate those impacts.¹⁸⁵ For states without a consultation provision in their state endangered species laws, a little NEPA can go a long way toward providing the coordination and consultation needed to ensure that state agency actions do not harm species.

State Constitutions

State constitutional provisions can provide additional protections for biodiversity. Alaska’s state constitution, for example, has a public trust provision providing that “wherever occurring in their natural state, fish, wildlife, and waters are reserved to the people for their common use.”¹⁸⁶ Hawaii has a similar provision, and goes farther by giving citizens the right to sue for violations of natural resource laws.¹⁸⁷ Other states are considering a “[Green Amendment](#),”¹⁸⁸ an environmental rights amendment to emphasize environmental health and safety as part of basic civil liberties in a state constitution’s bill of rights.¹⁸⁹

Species and Habitat Laws

Laws aimed at specific species or habitat protection can also be invaluable. States across the country are enacting laws to protect pollinators, control invasive species, improve wildlife connectivity, and prohibit wildlife trafficking.

Pollinators

Pollinators, including bees, birds, butterflies, bats and other insects are declining rapidly due to a number of factors, including loss of habitat, loss of forage, and pesticides. Some pollinators such as bumblebees and Monarch butterflies may be on the verge of extinction. Many states have enacted or

¹⁸³ N.Y. Ed. Law §235-a; also see N.Y. Exec. Law §§912, 961-a, 801; N.Y. Envrtl. Conser. Law §§13-0105, 46-0101, 57-0101.

¹⁸⁴ North Carolina Biodiversity Project (2022).

¹⁸⁵ Haw. Rev. Stat. §343 et seq.

¹⁸⁶ Alaska Const. Art. VIII, §3.

¹⁸⁷ Haw. Const. Art. XI, §9.

¹⁸⁸ As of 2022, ten states have introduced Green Amendments: Washington, New Mexico, New York, Maryland, Kentucky, Iowa, Oregon, West Virginia, New Jersey, and Hawaii.

¹⁸⁹ Kate Burgess, “Green Amendments,” National Caucus of Environmental Legislators (2021).

are considering legislation to acquire, restore and/or protect pollinator habitat, as well as to restrict the application of pesticides such as neonicotinoids and other chemicals that are harmful to pollinators. [Innovative funding mechanisms](#) like pollinator license plates and community engagement initiatives (such as “[Lawns to Legumes](#)” in Minnesota¹⁹⁰) have also been introduced in recent years.¹⁹¹

Invasive Species

Invasive species have been [cited as a main driver](#) of recent species extinctions due to their ability to degrade habitats and overexploit resources that are necessary for the survival of native flora and fauna.¹⁹² Found in [all 50 states](#),¹⁹³ invasive species can reproduce and spread rapidly, thrive in many different environments, and withstand threats that native species cannot. Terrestrial invasive species thrive on land in the form of both plants and wildlife, and can spread through a number of methods, such as unintentional planting of non-native plants, accidentally spreading seeds that get stuck to footwear, or through the intentional release of wildlife like Burmese pythons in the Everglades. Aquatic invasive species, such as [lionfish](#) on the coral reefs of the Western Atlantic, are particularly difficult to manage due to their relatively uninhibited range, and reproductive proclivity.¹⁹⁴ Efforts to control both [aquatic](#) and [terrestrial](#) invasive species are very difficult and expensive, and are a priority for many state wildlife and other agencies.¹⁹⁵ From 2019-2022, dozens of state bills across the U.S. - many with strong bipartisan support - were introduced to help combat these pervasive invasives, through increased funding programs, the establishment of task forces to study recommendations for addressing threats, and studies for prevention and resilience. More state action is necessary to both stop the current and prevent future spreads of non-native species on land and underwater.

Wildlife Connectivity

Wildlife are losing the ability to move, migrate, and disperse across landscapes as built infrastructure and increased development intersect habitat or cut off migration routes. [Wildlife corridors](#) and wildlife crossings are vital and cost-effective ways for states to maintain resilient ecosystems and to protect public health and safety on roads.¹⁹⁶ In Oregon, for example, a planned highway expansion would have impacted the bi-annual migration of mule deer; thanks to a series of wildlife passages on U.S. 97, the migration route was maintained, and wildlife-vehicle collisions were [reduced by 90%](#) in the first year.¹⁹⁷ On a national level, the [National Wildlife Corridors Conservation Act](#), passed by the House in 2021,¹⁹⁸ would create a consistent approach to wildlife connectivity across the country.

¹⁹⁰ “Your Yard Can BEE The Change,” Minnesota Board of Water and Soil Resources (n.d.).

¹⁹¹ Ruth Musgrave, “Pollinators,” National Caucus of Environmental Legislators (2019).

¹⁹² Kate Burgess & Nathan Smith. “Restaurant Decision-maker Perceptions of Barriers and Opportunities for Invasive Lionfish Consumption,” SocArXiv (2021).

¹⁹³ USDA, Species Lists, National Invasive Species Information Center, (n.d.).

¹⁹⁴ Kate Burgess & Nathan Smith. “Restaurant Decision-maker Perceptions of Barriers and Opportunities for Invasive Lionfish Consumption,” SocArXiv (2021).

¹⁹⁵ Kate Burgess & Justin Gulino, “Aquatic Invasive Species,” and “Terrestrial Invasive Species,” National Caucus of Environmental Legislators, (2020).

¹⁹⁶ Ruth Musgrave, “Wildlife Connectivity and Crossings,” National Caucus of Environmental Legislators, (2019).

¹⁹⁷ Oregon Conservation Strategy, “Strategy Spotlight: US 97 Wildlife Crossing,” (n.d.)

¹⁹⁸ Included as part of H.R. 3684 (2021).

Wildlife Trafficking

The demand for elephant ivory and rhino horn as well as for other exotic species, driven by China, Japan, the Philippines, the United States (the [second largest importer](#) of illegal wildlife¹⁹⁹), and other countries, has created a massive international, largely illegal market that is having detrimental economic, social and environmental effects. Trafficking in wildlife is causing the decline and even threatens extinction of species such as giraffes and domestic tortoises. The wildlife trade, both legal and illegal, has recently gained more attention because of the spread of zoonotic diseases such as Covid-19 and Zika virus. [State legislation](#) outlawing intrastate trade of certain exotic species, as well as laws and funding for better monitoring and enforcement can help fill the gaps that national laws don't cover.²⁰⁰

Other Laws

Finally, laws aimed at protecting specific habitats can extend benefits to species found within those habitats, such as wetlands and other habitats, including caves. In Tennessee, for example, the state relies on its cave protection laws to help protect endangered bats;²⁰¹ over two dozen other states have [similar laws](#).²⁰² [California's Waterfowl Habitat Preservation Program](#) improves much-needed habitat for wetland wildlife on private lands, in response to a loss of wetland habitat in the state.²⁰³ With habitat loss as a major cause of species' decline, such laws can help provide crucial habitat for the species that depend on them, including endangered species.

Federal Efforts

Endangered Species Act

Through the federal Endangered Species Act,²⁰⁴ there is widespread protection of both endangered and threatened species in this country. The ESA specifically prohibits the killing and harassment of protected species, as well as the destruction of habitat deemed necessary for the conservation of listed species. Protections extend to both animals and plants, and all federal agencies must consult regarding agency project impacts to listed species. As respondents from Kansas to Louisiana noted, the federal environmental laws such as the ESA "must be safeguarded" as important "federal boundaries," especially in states with weak or nonexistent state protections. The federal ESA thus provides a consistent approach across state boundaries.

Yet despite the importance of federal laws such as the ESA,²⁰⁵ efforts have been ongoing for years to weaken them. The [most recent actions](#), taken during the Trump Administration to limit habitat protections for imperiled animals and plants listed under the ESA, were recently overturned, but the

¹⁹⁹ UNODC, "World Wildlife Crime Report 2020: Trafficking in Protected Species," (2020).

²⁰⁰ Ruth Musgrave, "Wildlife Trafficking," National Caucus of Environmental Legislators, (2019).

²⁰¹ Tenn. Code Ann. §11-5-108.

²⁰² Aaron Atz, "State Cave Protection Laws," NSS Cave Vandalism Deterrence Reward Commission, n.d.

²⁰³ California Dept of Fish and Wildlife, "California Waterfowl Habitat Program," (n.d.).

²⁰⁴ 16 U.S.C. §§1531-1544.

²⁰⁵ See "Emergence of the Federal ESA" section of this report.

threat remains.²⁰⁶ With state wildlife agencies having the primary authority and responsibility for the protection and management of wildlife, state laws are essential to achieving the goals of the federal act.

30x30

In addition to endangered species protection, there is more that the states can do, in partnership with the federal government. To prevent future loss and to help increase outdoor access for historically underrepresented communities, many prominent scientists, including the late conservation biologist Dr. [Edward O. Wilson](#),²⁰⁷ have called for the conservation of half of the world’s land and oceans for the long-term health of the planet. This has sparked a movement to conserve 30% of the world’s land and oceans by 2030, which has gained international momentum. Identical bills committing the United States to a “30x30” goal have been introduced into the U.S. [House](#) and [Senate](#).²⁰⁸ With [federal recognition](#)²⁰⁹ of the need to take action, there is an opportunity for state legislators to join the movement by protecting land locally and creating a strong partnership with the federal government.

National Biodiversity Strategy

Along with calls for habitat conservation, there are also calls for the United States to create a National Biodiversity Strategy. Backed by leading scientists, environmental organizations, and college students across the country, the movement is also gaining support in [Congress](#).²¹⁰ A [sign on letter](#) from state legislators supporting a National Biodiversity Strategy has garnered the support of over 360 legislators.²¹¹

Because the U.S. lacks a comprehensive and coordinated approach to biodiversity loss, and is one of the only nations without a national biodiversity strategy, such a strategy is needed to ensure that the U.S. government is taking an effective, whole-of-government approach to prevent the extinction of species, the collapse of ecosystems, and the increasing threats these pose to our health, security and well-being. A national biodiversity strategy would address the extinction crisis by requiring more effective and coordinated use of laws and policies to protect biodiversity and reverse its decline, while reasserting the United States’ international leadership, and is already being supported by [state resolutions](#).²¹²

Proactive Conservation

While the goal of this report is to highlight meaningful and innovative state laws to protect endangered and threatened wildlife, action taken before a species becomes in danger of extinction can save the lives of individual species, as well as save money, time, and effort. Yet the task is daunting. In [Alabama](#), for

²⁰⁶ See, 84 F.R. 44753, 84 F.R. 44976, 84 F.R. 45020; vacated by *Center for Biological Diversity et al. v. Haaland et al.*, U.S.D.C., N. D. Ca. 4:19-cv-05206-JST (July 5, 2022).

²⁰⁷ E.O. Wilson Biodiversity Foundation, Half Earth Project, (n.d).

²⁰⁸ HR 835, SR 372.

²⁰⁹ Executive Order on Tackling the Climate Crisis at Home and Abroad, White House, (27 Jan 2021).

²¹⁰ HR 69.

²¹¹ Taylor Anderson, “National Biodiversity Strategy,” National Caucus of Environmental Legislators, (May 2022).

²¹² For example, see SJM 2, introduced by Sen. Mimi Stewart of New Mexico (2022).

instance, nongame wildlife make up more than 95% of the state’s native species,²¹³ making the state agency’s mission “a formidable task.” One respondent after another emphasized the need for proactive rather than reactive conservation. As a staffer in Wisconsin noted, “[b]y the time a species reaches the endangered species list, it is in the emergency room.” Another pointed out that “[e]ach time a species reaches the point that it needs listing, it takes time and resources away from other species.” What types of proactive measures work best? Below are some examples of effective proactive measures.

Habitat Protection

Without exception, state agency staff highlighted the need for habitat protection as the best way to protect species before they become endangered. As one respondent noted, states need to be “proactive rather than reactive.” Unlike commercial hunting, which targets individual species and played a major role in the extirpation of many species during the 19th century such as the passenger pigeon and bison, habitat destruction affects virtually all the species that share a common area. With the U.S. [losing two football fields](#) worth of habitat each minute,²¹⁴ the situation is urgent. In Puerto Rico, for example, the loss of mangroves is leading to erosion and storm surge, as well as the loss of species such as the [Puerto Rican plain pigeon](#).²¹⁵

Many states cited a lack of funding as the primary impediment to increasing habitat purchases through fee simple acquisition or conservation easements. Fortunately, RAWA funds can be used for habitat restoration, revegetation, management, acquisition and more, including creating wildlife corridors and refugia for species. Other mechanisms for habitat protection include state land acquisition programs, such as the [Great Outdoors Colorado program](#),²¹⁶ preservation through federal designations as parks and monuments via such laws as the [Antiquities Act](#),²¹⁷ which state legislators can support through resolutions and sign-on letters, as well as partnerships with other federal and local government entities and land use organizations to purchase lands.

Research

Basic scientific data about state species was also cited as a critical need. Life history information and population assessments through research, surveying, and monitoring are needed to obtain baseline information about a species’ status. Mississippi, for example, noted the importance of surveying just to “keep up” with the status of a species, even if protection efforts are not available due to a lack of funding or a “politically charged” landscape. Again, RAWA funds can be used to support these activities; other options include working with a state university extension service and partnering with other state and federal agencies to share data about species.

²¹³ “Nongame Wildlife Program,” Outdoor Alabama (n.d.).

²¹⁴ Justin Gulino, “Biodiversity,” National Caucus of Environmental Legislators, (2022).

²¹⁵ Michael Allen, “The Puerto Rican Plain Pigeon Can’t Take Another Big Hurricane,” Hakai Magazine, (2022).

²¹⁶ Great Outdoors Colorado (n.d.).

²¹⁷ 54 U.S.C. §§320301 - 320303.

Education and Outreach

Educational programs and outreach are important components of any effort to protect rare species.²¹⁸ Landowners, for example, are more likely to make investments in habitat if they have good information about the value of a species present on their land, and about how to implement steps to protect species. Educating the broader public about the need for good stewardship and about the benefits associated with ecosystem management is also important. RAWA will allow educational and outreach programs to be implemented, engaging the public in local conservation efforts.

Overall, respondents agreed that outreach and education were needed. In Connecticut, a respondent said that outreach to developers and municipalities would be very helpful, but they lacked the capacity. Another respondent bluntly stated that education was needed to help people learn to live with wildlife “rather than killing it” and was more important than penalties, which should be a “last resort.” Louisiana is considering a radio show with the state’s herpetologist to highlight popular species, and Mississippi wants to teach about the value of wildlife to change the “hearts and minds” of its citizens. A staffer in Oklahoma summed it up: “You can have a top-notch ESA-level statute, but it won’t move the needle without education.”

Partnerships

Creating partnerships with industries such as agriculture and oil and gas, landowners, land trusts, tribes, and other governmental entities is another way to increase a wildlife agency’s ability to protect wildlife before they become endangered or threatened. As a respondent in Wisconsin aptly noted, partnerships make sense because “no one wants to see species on the list, whether you are a preservationist or from industry.”

In Maine, for example, the state has an active landscape scale conservation community, with the nation’s highest number of land trusts per capita. The state is 90% privately owned, so working with private landowners through land trusts has enabled the state to protect habitat that isn’t protected by law. Maryland works with counties to give weight to vulnerable species in the permit development process. Massachusetts has a cooperative agreement with the state transportation department to review their projects, in exchange for work on wildlife crossings and passage. North Dakota is working with landowners to enhance habitat rather than make new acquisitions. Collaborating with landowners such as oil and gas companies, they are seeking to find the “win-win” to show that working lands can still support species.

Collaboration with Tribes - The Original Wildlife Stewards

Tribes are sovereign, self-governing entities whose formation predate that of the United States. Tribal Nations are on equal footing with states, and as such, both share government-to-government

²¹⁸ For a review of past state biodiversity education efforts, see *Saving Biodiversity: A Status Report on State Laws, Policies and Programs*, Center for Wildlife Law and Defenders of Wildlife, (1996).

relationships with the federal government. Therefore, states and Tribes have a unique opportunity to collaborate on the management of threatened and endangered species for the benefit of all state citizens, both Tribal and non-Tribal.

Unlike state agencies, Tribal Nations do not receive annual funding dedicated to their fish and wildlife programs. Instead, Tribes are required to compete for [nonrenewable grants](#); typically, between \$5 and \$6 million is available to split among 574 Tribes that manage roughly 140 million acres of land.²¹⁹ These grant applications are time consuming, and funding is never guaranteed, making setting and maintaining conservation priorities difficult for Tribes. The Recovering America's Wildlife Act (RAWA) would have helped mitigate this financial uncertainty by securing the first-ever guaranteed federal funding to support Tribal fish and wildlife management. Unfortunately, however, the bill failed to pass Congress in December 2022.

One of the biggest benefits of this funding for Tribes would have been the opportunity to hire more staff. Currently, for example, the Eastern Band of Cherokee Indians has a staff of four to manage 57,600 acres of land - compared to North Carolina's Department of Natural and Cultural Resources, which has a staff of more than 1,500 for the entire state. RAWA funding would have also allowed Tribes to upgrade essential monitoring equipment. One lab run by wildlife biologist Caleb Hickman from the Cherokee Tribe noted in a recent Native American Fish and Wildlife Society article: "My office is also my lab and meeting room. We're often dissecting an animal on a desk that we might have to have a meeting on later."

Now more than ever, without the funding from RAWA, Tribes will need new sources of funding for their wildlife management. States, for example, can invest in the important wildlife management and conservation work being carried out by Tribes. They can help provide matching funds for federal funding that is available for tribal wildlife management, such as from the America the Beautiful Challenge and National Fish and Wildlife Foundation grants, or share resources and personnel from state wildlife agencies.

Establishing cooperative agreements with Tribes is another way for states to help build capacity. In June 2022, The Oregon Fish and Wildlife Commission voted to adopt a new [Cooperative Management Agreement](#) between the Coquille Indian Tribe and the Oregon Department of Fish and Wildlife (ODFW).²²⁰ This agreement is in response to drastically declining numbers of Chinook salmon - a vital cultural, spiritual, and subsistence species for Coquille tribal citizens. The Coquille Tribe recognized the amount of work needed to restore Chinook numbers, among other species, and noted that it's too much work for one agency to do alone. Why not work together if ODFW's and the Coquille Tribe's missions align?

²¹⁹ Evan Bourtis, "Underfunded but passionate, Native American conservationists call for more support," Mongabay (30 Nov 2021).

²²⁰ Oregon Department of Fish and Wildlife, "Commission adopts Coquille Tribe Agreement and 2023-25 Agency Request Budget" (17 June 2022).

Specifically, the agreement allows for the sharing of resources, and establishes a partnership to enhance fish and wildlife populations within a five county area of southwest Oregon. It also establishes a framework for Coquille Tribal members to participate in subsistence and ceremonial harvest of fish and wildlife resources; within the five counties, enrolled members of the Coquille Indian Tribe can participate in fishing, hunting, shellfishing, and trapping.

The Coquille Tribe has celebrated this step for its cultural restoration principles, and also for the recognition of Tribal governments and states acting as cooperative sovereigns on species restoration.



Photo Content: Brenda Meade, right, chair of the Coquille Tribal Council, shakes hands with members of the Oregon Fish and Wildlife Commission on June 17 after the commission approved a co-management agreement between the tribe and state. Photo Source: ODFW

Lastly, the black-footed ferret's comeback is another example of successful State/Tribal collaboration. Once occupying a whopping 96 million acre range in the Midwest U.S., the black-footed ferret encountered trouble in the late 1800s, as ranchers settled in the area and destroyed their and their prey's (prairie dogs) habitat. Numbers dwindled until the black-footed ferret was subsequently [declared extinct](#) in 1979.²²¹ In the early 80's, a small colony was discovered in Wyoming, and since then, Tribes have worked with state wildlife agencies to lead the ferret's reintroduction across several states, with all releases descending from the Wyoming population.

From a global standpoint, lands inhabited by Indigenous Peoples contain 80% of the world's remaining biodiversity.²²² As this statistic and the above examples show, Indigenous groups - especially Tribes - are integral to preventing species' extinction, and state agencies can and should partner with these groups more closely.

²²¹ Smithsonian's National Zoo and Conservation Biology Institute, "Black-Footed Ferrets: Top Milestones for a Species Once Presumed Extinct," (2021).

²²² Kanyinke Sena, "Recognizing Indigenous Peoples' Land Interests is Critical for People and Nature," World Wildlife Fund, (2020).

State Agency Reform

For decades, there have been efforts across the country to reform state wildlife agencies and commissions, in an attempt to shift the focus from a game culture to one of stewardship for all wildlife and the multitude of non-consumptive uses such as wildlife watching. State wildlife agencies, most of which were established at the turn of the last century, were primarily focused on the management of game species, due in large part to the [funding provided](#) by hunting and fishing revenues.²²³ Commissions, which oversee a state's wildlife agency, are typically appointed by the Governor and therefore are subject to political winds. Most require that some of the seats be held by consumptive users, such as hunters, anglers, trappers, or farmers and ranchers; a few actually [prohibit non-consumptive users](#) from serving.²²⁴

Yet as more interest in and awareness of nongame wildlife increased, so were calls for increased funding and attention to nongame species. Today, all but eleven of these agencies include "wildlife" in their name rather than "game," and funding sources have diversified to include wildlife license plate sales, lottery proceeds, income tax checkoffs, and other sources.²²⁵ Some now have a broader mission and scope to include more of a focus on nongame species, reflecting the expanded public interest in wildlife beyond consumptive uses along with the scientific consensus about the importance of all species, and [efforts](#) are underway in many more.²²⁶ Additionally, [some states](#) are exploring options to include people with more diverse demographic, geographic, and occupational backgrounds on commissions to better represent the interests of all wildlife and all people.²²⁷ Efforts are also underway nationally to increase state agency relevancy by including broader constituencies, through a "[Relevancy Roadmap](#)" created by the Association of Fish and Wildlife Agencies.²²⁸

Nevertheless, the lack of significant nongame funding continues to pose a challenge to this new vision of state wildlife agencies as stewards of all wildlife within the states, and away from the game management paradigm. This change is needed, however, to keep pace with the dramatic changes in our understanding of ecosystems and wildlife management over the past century, as well as rapid changes brought on by climate change.

²²³ Logan Christian, "Wildlife Agency Relevance and Funding," National Caucus of Environmental Legislators, (2022).

²²⁴ These states include North Dakota and Mississippi. See Ruth Musgrave et al., *State Wildlife Laws Handbook* (Government Institutes, Inc. 1993).

²²⁵ The eleven states are Alaska, Arizona, Arkansas, Idaho, Nebraska, New Hampshire, New Mexico, North Dakota, Pennsylvania, South Dakota, and Wyoming.

²²⁶ See for example, SB 312 (2021) in New Mexico, sponsored by Senator Jeff Steinborn.

²²⁷ See for example, HB 254 (2017) in New Mexico, sponsored by Representative Matthew McQueen.

²²⁸ Association of Fish and Wildlife Agencies, "Fish and Wildlife Agency Relevancy Roadmap," (n.d.).

Conclusion

“Well-informed legislators ensure that our country has effective, impactful environmental policies that will create a healthier world for all.”

Jeff Mauk, Executive Director, NCEL

Despite numerous geographic, political, and other differences, what doesn't change across the United States is each state's dependence on our natural world, from individual species to intact ecosystems, all of which are essential for supporting the human population, from both an ecological and economic standpoint.

It is thus in each state's individual and collective interest to protect the species within its borders and to cooperate with neighboring states and federal partners. It is also in each state's interest to ensure that efforts to protect species are strong and consistent throughout the country. Robust endangered species legislation adopted by a number of states, in conjunction with the federal Endangered Species Act, would be an enormous step forward in protecting our nation's treasured plant and animal species. We at NCEL hope that this report will provide a roadmap for such efforts.

Appendices

Appendix A - State Survey

Appendix B - State Summaries

Appendix C - State Statute Examples

Appendix D - Model Law (1998)

Appendix A: State Survey

STATE ENDANGERED SPECIES ACTS: WHAT'S WORKING, WHAT'S NOT, WHAT COMES NEXT

We are interested in your experience working with endangered species in your state, and your thoughts about your state's endangered species act (SESA). The questions below are designed to elicit information about what's working in your state, what's not working, and what could be done to improve protection efforts at the state level.

1. Please rate the usefulness of your SESA. (1 = not useful at all, 2-4 = barely useful, 5-6 = moderately useful, 7-9 = very useful, 10 = extremely useful)

2. What changes, if any, does your state law need? Please check all that apply.

_____ critical habitat protection

_____ broader take definition

_____ landowner incentives

_____ consultation requirement

_____ science-based listing criteria

_____ candidate species listing

_____ recovery planning

_____ increased penalties

_____ other (explain)

3. What else would help to improve endangered species protection in your state? Please check all that apply.

_____ additional funding

_____ increased implementation

_____ increased enforcement

_____ more public acceptance/education

_____ better coordination with other laws (state and federal)

_____ other (explain)

4. What percentage of your department's budget and time would you estimate is spent on endangered species protection (state and federally-listed species)?

5. Where does this funding come from? Please include all sources such as federal, state, local, and private. Is it sufficient? Where could additional funding come from?

6. How much emphasis is placed on each of the following areas (percentage estimate):

_____ % protecting a state-listed species that is not yet federally listed

_____ % jointly protecting a state-listed species that is also federally listed

7. Please give an example of a "success" story – a species that was (or is) state-listed or state/federal listed and is now improving. What factor(s) contributed to the success of the species' improvement?

8. Please give an example of a "failure" – a species for which state or state/federal listing and other efforts have not been successful, and the species is still declining or is now extinct. What factor(s) contributed to this failure?

9. What is the best way to protect species before they need SESA protection (i.e., habitat protection, regional collaboration, etc.)? How effective is your state at this?

10. Closing thoughts/comments? What should we have asked but didn't?

Appendix B: State Summaries

Alabama			
Alabama has its own list of protected species based on regulatory authority, but no statutory protection for threatened and endangered species exists other than through nongame programs.			
LISTING	PROHIBITIONS	CRITICAL HABITAT	RECOVERY PLANS
Who does it: N/A	Import/export: N/A	Yes/No: N/A	Yes/No: N/A
Criteria: N/A	Take: N/A	Acquisition of habitat: N/A	Time Limit: N/A
Subspecies: N/A	Transport: N/A		
Candidate Species: N/A	Sale: N/A		
Emergency Listing: N/A	Possess: N/A		
CONSULTATION	LANDOWNER INCENTIVES	PERMITS	PENALTIES
Yes/No: N/A	Yes/No: N/A	Scientific: N/A Educational: N/A Zoological: N/A Propagation: N/A Other: N/A	N/A
What entities: N/A	Type: N/A	Incidental take: N/A	
PLANTS	UNIQUE PROVISIONS		
Yes/No: N/A	N/A		
What provisions: N/A			

Alaska

Alaska Stat. §§16.20.180 to .210 (originally enacted 1971)

LISTING	PROHIBITIONS §§16.20.195, .200	CRITICAL HABITAT	RECOVERY PLANS
Who does it: Commissioner of Fish & Game §16.20.190	Import/export: Yes	Yes/No: No; but Commissioners of Fish & Game, Natural Resources shall "preserve the natural habitat of species or subspecies of fish and wildlife...threatened with extinction." §16.20.185	Yes/No: No
How often: Every 2 years			
Criteria: When "numbers have decreased...to indicate that its continued existence is threatened" §16.20.190	Take: Yes; "harvested, captured, or propagated"	Acquisition of habitat: No	Time Limit:
Subspecies: Yes §16.20.190	Transport: No		
Candidate Species: No	Sale: No		
Emergency Listing: No	Possess: Yes		
CONSULTATION	LANDOWNER INCENTIVES	PERMITS §16.20.195	PENALTIES
Yes/No: No	Yes/No: No	Scientific: Yes Educational: Yes Propagation: Yes Zoological: No Other: No	Misdemeanor for violation of any permit or prohibition §16.20.200
What entities: N/A	Type: N/A	Incidental Take: No	
PLANTS	UNIQUE PROVISIONS		
Yes/No: No	N/A		
What provisions: N/A			

Arizona

Ariz. Rev. Stat. Ann. §§17-268, -296, -298, -314, -402 to -407
(originally enacted 1977) (animals)

LISTING	PROHIBITIONS	CRITICAL HABITAT	RECOVERY PLANS
Who does it: By regulation	Import/export: No	Yes/No: No; but "sensitive habitat" defined for acquisition purposes §§17-296, -298	Yes/No: No; but conservation plans "to promote compliance with federal law" must be consistent with state's "economic development and fiscal stability" §17-495
How often: Every 2 years			
Criteria: Species in imminent danger of elimination from its range in the state §17-296	Take: Yes; taking, wounding, killing, or possessing §17-314	Acquisition of habitat: Yes §§17-298, -404	Time Limit:
Subspecies: Yes §17-296	Transport: No		
Candidate Species: Yes §17-296	Sale: No		
Emergency Listing: No	Possess: Yes		
CONSULTATION	LANDOWNER INCENTIVES	PERMITS	PENALTIES
Yes/No: No	Yes/No: No	Scientific: No Educational: No Zoological: No Propagation: No Other: No	Civil penalty minimum of \$8,000 §17-314
What entities: N/A	Type: N/A	Incidental Take: No	
PLANTS	UNIQUE PROVISIONS		
Yes/No: Yes; see separate	Game, Nongame, Fish		

plants summary	and Endangered Species Fund §17-268		
What provisions: N/A			

Arizona - Plants			
Ariz. Rev. Stat. Ann. §§3-901 to -916, -932 to -933 (originally enacted 1989) (plants)			
LISTING	PROHIBITIONS	CRITICAL HABITAT	RECOVERY PLANS
Who does it: Director of Plant Industries Division §3-901	Import/export: No	Yes/No: No	Yes/No: No
How often: N/A			
Criteria: "Highly safeguarded native plants" - species whose prospects for survival for in state are in jeopardy and are on federal ESA list §3-903	Take: Yes; but allowed if on private land and person gives notice §§3-904, -908	Acquisition of habitat: No; habitat protection and maintenance only §3-911	Time Limit: N/A
Subspecies: No	Transport: Yes		
Candidate Species: No	Sale: No		
Emergency Listing: No	Possess: Yes		
CONSULTATION	LANDOWNER INCENTIVES	PERMITS §3-906	PENALTIES
Yes/No: No; but state agencies must give notice prior to destruction of protected plants on state land §17-905	Yes/No: No	Scientific: Yes Educational: No Propagation/Survival: Yes Other: Yes; for noncommercial salvage §§3-906, -916	Class 1 misdemeanor to class 6 felony, plus civil penalty up to \$5,000 §§3-932, -933
What entities: N/A	Type: N/A	Incidental Take: No permits, but chapter doesn't apply to "incidental or unavoidable	

		destruction" §3-915	
	UNIQUE PROVISIONS		
	Protected Native Plant Trust Fund §3-913		

Arkansas			
Ark. Code Ann. §§15-45-301 to 306			
LISTING	PROHIBITIONS	CRITICAL HABITAT	RECOVERY PLANS
Who does it: By regulation	Import/export: No	Yes/No: No; but land that is purchased is restricted to habitat for most "severely" threatened or endangered species	Yes/No: No
Criteria: No criteria	Take: No	Acquisition of habitat: Yes §15-45-304	Time Limit: N/A
Subspecies: No	Transport: No		
Candidate Species: No	Sale: No		
Emergency Listing: No	Possess: No		
CONSULTATION	LANDOWNER INCENTIVES	PERMITS	PENALTIES
Yes/No: No	Yes/No: No	Scientific: No Educational: No Zoological: No Propagation: No Other: No	
What entities: N/A	Type: N/A	Incidental Take: No	

PLANTS	UNIQUE PROVISIONS		
Yes/No: No	Highest priority for funding from state income tax check off goes to threatened and endangered species §15-45-303		
What provisions: N/A			

California			
"CALIFORNIA ENDANGERED SPECIES ACT" Cal. Fish and Game Code §§2050 to 2115.5 (originally enacted 1970)			
LISTING	PROHIBITIONS §§2050, 2080	CRITICAL HABITAT	RECOVERY PLANS
Who does it: Fish & Game Commission §2070	Import/export: Yes	Yes/No: No	Yes/No: No; but "non regulatory" recovery plans authorized §2079.1
How often: Every 5 years §2077			
Criteria: Native species or subspecies threatened or endangered "throughout all, or a significant portion, of its range" §2062	Take: Yes; "hunt, pursue, catch, capture, or kill"	Acquisition of habitat: Yes; "[I]t is the intent of the Legislature... to acquire lands for habitat" §2052	Time Limit: N/A
Subspecies: Yes §§2062, 2067	Transport: Yes		
Candidate Species: Yes §2068; all protections apply except consultation §2085	Sale: Yes; or purchase		
Emergency Listing: Yes §2076.5	Possess: Yes		
CONSULTATION	LANDOWNER INCENTIVES	PERMITS §§2081, 2087	PENALTIES

Yes/No: Yes §2053	Yes/No: Yes; Safe Harbor Agreement §§2089.2-.26 and Habitat Conservation Plan §§2800-2835	Scientific: Yes Educational: Yes Propagation: No Zoological: No Other: Yes; permits for management purposes and for specific species §2081.5	Up to \$5,000 and/or 1 yr. jail §12008
What entities: N/A	Type: N/A	Incidental Take: Yes §§2081.1, 2086	
PLANTS	UNIQUE PROVISIONS		
Yes/No: Yes; included in definition of species §2062	Landowners exempt from liability for harm to Dept. employees engaged in protection efforts §2056		
What provisions: Take provisions apply on private and public lands; see also California Native Plant Protection Act, §1900 et seq.; Desert Native Plants Act §1925 et seq.			

Colorado			
NONGAME, ENDANGERED, OR THREATENED SPECIES CONSERVATION ACT Colorado Rev. Stat. §§33-2-101 to -108 (1984) (originally enacted 1973)			
LISTING	PROHIBITIONS §33-2-105	CRITICAL HABITAT	RECOVERY PLANS
Who does it: Wildlife Commission §33-2-105	Import/export: Yes (export only)	Yes/No: No	Yes/No: No
How often: Every 5 years §33-2-105			

Criteria: "Wildlife indigenous to this state" §33-2-105	Take: Yes; but "accidental wounding or killing" by a motor vehicle, vessel, or train is excluded from take definition §33-1-102	Acquisition of habitat: Yes; management programs include acquisition of land §33-2-103, -106	Time Limit: N/A
Subspecies: Yes §33-2-105	Transport: Yes		
Candidate Species: No	Sale: Yes		
Emergency Listing: No	Possess: Yes		
CONSULTATION	LANDOWNER INCENTIVES	PERMITS §33-2-106	PENALTIES
Yes/No: No	Yes/No: No	Scientific: Yes Educational: Yes Propagation: Yes Zoological: Yes Other: Yes; to alleviate damage to property or protect human health	Criminal - misdemeanor; \$2,000-100,000 and/or 1 yr. jail plus 20 license points §33-6-109
What entities: N/A	Type: N/A	Incidental Take: No	Civil - minimum \$1,000 fine §33-6-110
PLANTS	UNIQUE PROVISIONS		
Yes/No: No	Legislation is required before a species can be reintroduced §33-2-105.5		
What provisions: N/A			

Connecticut			
Conn. Gen. Stat. Ann. §§26-303 to -316 (originally enacted 1989)			
LISTING	PROHIBITIONS §26-311	CRITICAL HABITAT	RECOVERY PLANS
Who does it: Commissioner of Environmental Protection	Import/export: Yes; in definition of take	Yes/No: Yes; "essential habitat" §26-306	Yes/No: No

§26-306			
How often: Every 5 years §26-307			
Criteria: Native species in danger "throughout all or significant portion of its range within the state" and no more than five occurrences in the state §26-304	Take: Yes; applies to take on public lands and "wilful take" on private lands §26-311; take definition includes "capture, collect, destroy, harm, hunt, kill, pursue, shoot, trap, snare, net, possess, transport, remove, sell or offer for sale, export or import" §26-304	Acquisition of habitat: Yes; Commissioner can acquire "essential habitat" §26-309	Time Limit: N/A
Subspecies: Yes; includes distinct populations §26-304(6)	Transport: Yes; in definition of take		
Candidate Species: No; but "species of special concern" §26-304(9)	Sale: Yes; in definition of take		
Emergency Listing: No	Possess: Yes; in definition of take		
CONSULTATION	LANDOWNER INCENTIVES	PERMITS	PENALTIES §26-40f
Yes/No: Yes; to ensure that actions don't threaten continued existence of species or destroy or adversely modify essential habitat §26-310	Yes/No: No	Scientific: No Educational: No Propagation: No Zoological: No Other: No	Up to \$1,000 and/or 6 mo. jail for violation of take prohibition
What entities: State agencies	Type: N/A	Incidental Take: No; no permit, but landowners may perform legal activities on land that may result in incidental taking §26-311	Employers who encourage violations can be fined up to \$10,000 and/or jailed up to 1 yr.

PLANTS	UNIQUE PROVISIONS		
Yes/No: Yes; included in definition of species §26-304	Authorizes Commissioner to regulate trade in elephant ivory, eelgrass beds §§26-315, -316		
What provisions: Same as for animal species			

Delaware			
Del. Code Ann. tit. 7 §§601 to 605 (originally enacted 1971)			
LISTING	PROHIBITIONS 7 §601	CRITICAL HABITAT	RECOVERY PLANS
Who does it: Division of Fish & Wildlife 7 §601	Import/export: Yes (import only)	Yes/No: No	Yes/No: No
How often: No time limit			
Criteria: Species threatened with extinction; includes federal list 7 §601	Take: No	Acquisition of habitat: No	Time Limit: N/A
Subspecies: No	Transport: Yes		
Candidate Species: No	Sale: Yes		
Emergency Listing: No	Possess: Yes		
CONSULTATION	LANDOWNER INCENTIVES	PERMITS (for import) 7 §604	PENALTIES
Yes/No: No	Yes/No: No	Scientific: Yes Educational: Yes Propagation: Yes Zoological: Yes Other: No	Search, seizure, and forfeiture authorized 7 §603 Violation of any provision is class A environmental misdemeanor 7 §605
What entities: N/A	Type: N/A	Incidental Take: No	

PLANTS	UNIQUE PROVISIONS		
Yes/No: No	Tax check-off program for rare and endangered species 7 §201		
What provisions: N/A			

Florida			
"FLORIDA ENDANGERED & THREATENED SPECIES ACT" Fla. Stat. Ann. §§ 379.2291-2311; 379.212, 379.411 (originally enacted 1977) (animals)			
LISTING	PROHIBITIONS §379.411	CRITICAL HABITAT	RECOVERY PLANS
Who does it: Fish and Wildlife Commission (freshwater and upland species); Dept. of Environmental Protection (marine species) §379.2291(2)	Import/export: No	Yes/No: No	Yes/No: No
How often: Every year			
Criteria: "Wildlife naturally occurring in Florida" §§379.2291(3) (b), (c)	Take: Yes "intentionally kill or wound"	Acquisition of habitat: Yes §379.212	Time Limit: N/A
Subspecies: No	Transport: No		
Candidate Species: Yes; "special concern" for marine species only §379.2291	Sale: No		
Emergency Listing: No	Possess: No		
CONSULTATION	LANDOWNER	PERMITS	PENALTIES

	INCENTIVES		
Yes/No: No	Yes/No: No	Scientific: No Educational: No Propagation: No Zoological: No Other: As provided in commission rules §379.411	Level Four violation §379.411
What entities: N/A	Type: N/A	Incidental Take: No	
PLANTS	UNIQUE PROVISIONS		
Yes/No: Yes; see separate plants summary	-Endangered and Threatened Species Reward Trust Fund §379.2292		
What provisions: N/A	-Unlawful to kill the endangered Florida panther §379.4115		

Florida - Plants			
Fla. Stat. Ann. §§581.185, .186 (originally enacted 1978) (plants)			
LISTING	PROHIBITIONS	CRITICAL HABITAT	RECOVERY PLANS
Who does it: Dept of Natural Resources §581.185	Import/export: No	Yes/No: No	Yes/No: No
How often: N/A			
Criteria: Plants in imminent danger of extinction within state; includes federal list §581.185	Take: No destruction or harvest without permission of landowner and a permit §581.185	Acquisition of habitat: No	Time Limit: N/A
Subspecies: Yes §581.185	Transport: Yes		

Candidate Species: No	Sale: Yes		
Emergency Listing: No	Possess: No		
CONSULTATION	LANDOWNER INCENTIVES	PERMITS	PENALTIES
Yes/No: No	Yes/No: No	Scientific: No Educational: No Propagation: No Other: Permits from Dept. §581.185	
What entities: N/A	Type: N/A	Incidental Take: No	
	UNIQUE PROVISIONS		
	-Clearing land for agriculture, surveys, fire control and other public purposes is exempted §581.185 -Native Flora Conservation Grants Program §581.185 -Endangered Plant Advisory Council §581.186		

Georgia			
"ENDANGERED WILDLIFE ACT OF 1973" Ga. Code Ann. §§27-3-130 to -133 (originally enacted 1973) (animals)			
LISTING	PROHIBITIONS	CRITICAL HABITAT	RECOVERY PLANS
Who does it: Dept. of Natural Resources §27-3-132	Import/export: No	Yes/No: No	Yes/No: No
How often: No time limit			

Criteria: "Protected species" are animals within state determined to be rare, unusual or in danger of extinction §27-3-132	Take: No; but authorized by rule §27-3-132	Acquisition of habitat: No	Time Limit: N/A
Subspecies: No	Transport: No		
Candidate Species: No	Sale: No; but authorized by rule §27-3-132		
Emergency Listing: No	Possess: No		
CONSULTATION	LANDOWNER INCENTIVES	PERMITS	PENALTIES
Yes/No: No	Yes/No: No	Scientific: No Educational: No Propagation: No Zoological: No Other: No	Misdemeanor for violation of any rule or regulation §27-3-133
What entities: N/A	Type: N/A	Incidental Take: No	
PLANTS	UNIQUE PROVISIONS		
Yes/No: Yes; see separate plants summary	Rules and regulations cannot affect rights in private property or in streams nor impede construction; must be limited to regulation of capture, killing, or selling and protection of habitat §27-3-132		
What provisions: N/A			

Georgia - Plants

"WILDFLOWER PRESERVATION ACT OF 1973" Ga. Code Ann. §§12-6-170 to -176 (plants)

LISTING	PROHIBITIONS §12-6-173	CRITICAL HABITAT	RECOVERY PLANS
Who does it: Dept. of Natural Resources §12-6-172	Import/export: No	Yes/No: No	Yes/No: No
How often: N/A			
Criteria: "Protected species" are plants within state determined to be rare, unusual or in danger of extinction §12-6-171	Take: Yes; can't cut, dig, pull up or remove protected species from public land without authorization §12-6-173	Acquisition of habitat: No	Time Limit: N/A
Subspecies: No	Transport: Yes; tag required to convey protected species §12-6-175		
Candidate Species: No	Sale: Yes; can't sell protected species unless grown on private land and sold by landowner or with permission of landowner §12-6-174		
Emergency Listing: No	Possess: No		
CONSULTATION	LANDOWNER INCENTIVES	PERMITS	PENALTIES
Yes/No: No	Yes/No: No	Scientific: No Educational: No Propagation: No Other: No	Misdemeanor for violation of any provision §12-6-176
What entities: N/A	Type: N/A	Incidental Take: No	

Hawaii

Haw. Rev. Stat. Ann. §§195D-1 to -32 (originally enacted 1975)

LISTING	PROHIBITIONS §195D-3	CRITICAL HABITAT	RECOVERY PLANS
Who does it: Dept. of Land and Natural Resources §195D-4	Import/export: Yes	Yes/No: No	Yes/No: No
How often: No time limit; upon the recommendation of the Dept. or citizen petition §195D-4			
Criteria: Indigenous fauna or flora; includes federal list §195D-2	Take: Yes; defined as "harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect" for aquatic life or wildlife; "cut, collect, uproot, destroy, injure, or possess" aquatic life or land plants §195D-2	Acquisition of habitat: Yes; Dept. can acquire lands needed to carry out programs to protect species §195D-5	Time Limit: N/A
Subspecies: Yes; or lower taxa §195D-2	Transport: Yes		
Candidate Species: No	Sale: Yes		
Emergency Listing: No	Possess: Yes		
CONSULTATION	LANDOWNER INCENTIVES	PERMITS §195D-5	PENALTIES
Yes/No: No, but Governor shall "encourage" other state & federal agencies to ensure that actions don't jeopardize threatened or endangered species §195D-2	Yes/No: Yes	Scientific: Yes Educational: No Propagation: Yes Zoological: No Other: No	- \$250-1,000 and/or up to 1 yr. in jail for the 1st conviction - \$500 -1,000 and/or up to 1 yr. jail for 2nd or subsequent convictions plus fines of \$500-1,000 for intentional, knowing

			or reckless removal §195D-9
What entities: N/A	Type: Habitat Conservation Plan §195D-21; Safe Harbor §195D-22, Incentives §195D-23	Incidental Take: Yes §195D-4	
PLANTS	UNIQUE PROVISIONS		
Yes/No: Yes, in definition of species §195D-2	Citizen suits authorized for violations of HCP or Safe Harbor Agreement §195D-32		
What provisions: take=cut, collect, uproot, destroy, injure or possess			

Idaho			
Idaho Code §§36-201, -202 (originally enacted 1976)			
LISTING	PROHIBITIONS	CRITICAL HABITAT	RECOVERY PLANS
Who does it: Fish & Wildlife Game Commission is authorized to classify species as threatened or endangered §36-201	Import/export: No	Yes/No: No	Yes/No: No
How often: No time limit			
Criteria: None	Take: No; defined in §36-202, but only prohibited for game, birds, or furbearing animals	Acquisition of habitat: No	Time Limit: N/A

	§36-1101		
Subspecies: No	Transport: No		
Candidate Species: No	Sale: No		
Emergency Listing: No	Possess: No		
CONSULTATION	LANDOWNER INCENTIVES	PERMITS	PENALTIES
Yes/No: No	Yes/No: No	Scientific: No Educational: No Propagation: No Zoological: No Other: No	
What entities: N/A	Type: N/A	Incidental Take: No	
PLANTS	UNIQUE PROVISIONS		
Yes/No: No	Delisting Advisory Team develops management plan when state-listed species is proposed to be delisted from federal list §§36-2401, -2405		
What provisions: N/A			

Illinois

"ILLINOIS ENDANGERED SPECIES PROTECTION ACT"
Ill. Ann. Stat. ch. 520, §§10/1 to 10/11 (originally enacted 1972)

LISTING	PROHIBITIONS §10/2	CRITICAL HABITAT	RECOVERY PLANS
Who does it: Endangered Species Protection Board §§10/6, 10/7	Import/export: No	Yes/No: Yes; "essential habitat" §10/11	Yes/No: No; but "conservation programs" are authorized which include essential habitat, beneficial legislation, grants, public education §10/11
How often: At least every 5 years §10/6			
Criteria: Species in danger of extinction in the wild in Illinois; includes federal list §10/2	Take: Yes; "harm, hunt, shoot,... destroy"	Acquisition of habitat: Yes; conservation program includes acquisition of essential habitat §10/11	Time Limit: N/A
Subspecies: Yes §10/7	Transport: Yes		
Candidate Species: No	Sale: Yes		
Emergency Listing: No	Possess: Yes		
CONSULTATION	LANDOWNER INCENTIVES	PERMITS §10/4	PENALTIES
Yes/No: Yes §10/11	Yes/No: No	Scientific: Yes Educational: Yes Propagation: No Zoological: Yes Other: Yes; botanical and limited permits for possession §10/5	Class A misdemeanor; fines up to \$1000 and/or up to 364 days jail §10/9
What entities: State & local agencies (enforceable only by writ of mandamus)	Type: N/A	Incidental Take: Yes; with approved conservation plan §10/5.5	Search and seizure authorized §10/8

PLANTS	UNIQUE PROVISIONS		
Yes/No: Yes; in definition of species §10/2			
What provisions: Can't take plants without written permission of landowner; can't sell plants §10/3; take defined as collect, pick, cut... or harm in any manner §10/2			

Indiana			
Ind. Code. Ann. §§14-22-34-1 to -21 (originally enacted 1973)			
LISTING	PROHIBITIONS §14-22-34-12	CRITICAL HABITAT	RECOVERY PLANS
Who does it: Director of Division of Fish & Wildlife §14-22-34-10	Import/export: Yes (export only)	Yes/No: No	Yes/No: No
How often: At least every 2 years §14-22-34-11			
Criteria: Species whose prospects of survival or recruitment within Indiana are in jeopardy; includes federal list §14-22-34-1	Take: Yes; "harass, hunt, capture, or kill" §§14-22-34-5, -12	Acquisition of habitat: Yes; management includes habitat acquisition §14-22-34-3	Time Limit: N/A
Subspecies: Yes §14-22-34-1(a)	Transport: Yes		
Candidate Species: No	Sale: Yes		
Emergency Listing: No	Possess: Yes		

CONSULTATION	LANDOWNER INCENTIVES	PERMITS §§14-22-34-15, -16	PENALTIES
Yes/No: No	Yes/No: No	Scientific: Yes Educational: Yes Propagation: Yes Zoological: Yes Other: Yes; "other special purposes"	Class A misdemeanor §14-22-34-12
What entities: N/A	Type: N/A	Incidental Take: No	
PLANTS	UNIQUE PROVISIONS		
Yes/No: No	No permit needed for "take" to alleviate damage to property or to protect human health §14-22-34-16		
What provisions: N/A			

Iowa			
Iowa Code Ann. §§481B.1. to .10 (originally enacted 1975)			
LISTING	PROHIBITIONS §481B.5	CRITICAL HABITAT	RECOVERY PLANS
Who does it: Natural Resource Commission §481B.3	Import/export: Yes (export only)	Yes/No: No	Yes/No: No
How often: At least every two years §481B.3			
Criteria: Species in danger of extinction throughout all or a significant part of its range; doesn't include	Take: Yes "shoot, wound, kill, trap, capture, collect" §481B.1	Acquisition of habitat: Yes; management programs include	Time Limit: N/A

insects if determined to be a "pest" §481B.1		acquisition of land §481B.4	
Subspecies: Yes §481B.1	Transport: Yes		
Candidate Species: No; but "closely resembles" §481.6	Sale: Yes		
Emergency Listing: No	Possess: Yes		
CONSULTATION	LANDOWNER INCENTIVES	PERMITS §§481B.7, .8	PENALTIES
Yes/No: No	Yes/No: No	Scientific: Yes Educational: Yes Propagation: Yes Zoological: Yes Other: Yes; to reduce property damage or to protect human health	Simple misdemeanor §481B.10
What entities: N/A	Type: N/A	Incidental Take: No	
PLANTS	UNIQUE PROVISIONS		
Yes/No: Yes; in definition of species §481B.1	Non-listed species can be treated as a listed species if there is a close resemblance §481B.6		
What provisions: Same as above prohibitions; take defined as collect, pick, cut or destroy			

Kansas

"NONGAME & ENDANGERED SPECIES CONSERVATION ACT"

Kan. Stat. Ann. §§32-952, 32-957 to -963; 32-1009 to -1012; 32-1033 (originally enacted 1975)

LISTING	PROHIBITIONS §32-961	CRITICAL HABITAT	RECOVERY PLANS
Who does it: Secretary of Dept. of Wildlife and Parks §32-960	Import/export: Yes (export only)	Yes/No: No	Yes/No: Yes §32-960a
How often: Every 5 years §32-960			
Criteria: Wildlife indigenous to the state whose continued existence is in jeopardy; includes federal list §32-958	Take: Yes §§32-1010, -1011	Acquisition of habitat: Yes; conservation programs include acquisition of land §32-962	Time Limit: N/A
Subspecies: No	Transport: Yes		
Candidate Species: No	Sale: Yes		
Emergency Listing: Yes §32-960	Possess: Yes		
CONSULTATION	LANDOWNER INCENTIVES	PERMITS §§32-952, 32-961	PENALTIES
Yes/No: No	Yes/No: Yes	Scientific: Yes Educational: Yes Propagation: Yes Zoological: No Other: Yes; for immediate threat to human life	Class A misdemeanor for unlawful taking §32-1033
What entities:	Type: Prelisting conservation agreements, safe harbor agreements, no take agreements authorized	Incidental Take: No	Class C misdemeanor for violation of other prohibitions §32-1031

	§32-962		
PLANTS			
Yes/No: No			
What provisions: N/A			

Kentucky			
Ky. Rev. Stat. Ann. §§ 150.180, .183, .280, .990 (originally enacted 1972) (animals)			
LISTING	PROHIBITIONS §§150.180, .183	CRITICAL HABITAT	RECOVERY PLANS
Who does it: Dept. of Fish & Wildlife Resources §150.183	Import/export: Yes (import only)	Yes/No: No	Yes/No: No
How often: No time limit			
Criteria: Species in danger of being extirpated from the Commonwealth of Kentucky or threatened with worldwide extinction; includes federal list §150.183	Take: No	Acquisition of habitat: No	Time Limit: N/A
Subspecies: No	Transport: Yes		
Candidate Species: No	Sale: Yes		
Emergency Listing: No	Possess: Yes; for purposes of sale		
CONSULTATION	LANDOWNER	PERMITS §§150.183, .280	PENALTIES

	INCENTIVES		
Yes/No: No	Yes/No: No	Scientific: Yes Educational: Yes Propagation: Yes Zoological: Yes Other: No	\$100-500 and/or up to 6 mo. jail; license sanctions also possible \$150.990
What entities: N/A	Type: N/A	Incidental Take: No	
PLANTS	UNIQUE PROVISIONS		
Yes/No: Yes; see separate plants summary	State assents to cooperative wildlife restoration projects with federal government §150.260		
What provisions: N/A			

Kentucky - Plants			
"KENTUCKY RARE PLANT RECOGNITION ACT" Ky. Rev. Stat. Ann. §§146.600 to .619 (originally enacted 1994) (plants)			
LISTING	PROHIBITIONS	CRITICAL HABITAT	RECOVERY PLANS
Who does it: Kentucky State Nature Preserves §146.610	Import/export: No	Yes/No: No	Yes/No: No
How often: N/A			
Criteria: Species in danger of being extirpated from all or significant portion of its range in Kentucky; includes federal list §146.605	Take: No; plants are property of the landowner §146.600	Acquisition of habitat: No	Time Limit: N/A
Subspecies: Yes §146.605	Transport: No		
Candidate Species: No	Sale: No		
Emergency Listing: No	Possess: No		

CONSULTATION	LANDOWNER INCENTIVES	PERMITS	PENALTIES
Yes/No: No	Yes/No: No	Scientific: No Educational: No Propagation: No Other: No	
What entities: N/A	Type: N/A	Incidental Take: No	
	UNIQUE PROVISIONS		
	Listing "shall not serve to impede the development or use of public or private lands including...construction or development" §146.615		

Louisiana			
La. Stat. Ann. §§56:1901 to :1907 (originally enacted 1974)			
LISTING	PROHIBITIONS §1904	CRITICAL HABITAT	RECOVERY PLANS
Who does it: Dept. of Wildlife & Fisheries §1904	Import/export: Yes (export only)	Yes/No: No	Yes/No: No
How often: No time limit			
Criteria: Wildlife requiring "protective regulation to prevent its extinction or the destruction or deterioration of its economic usefulness"	Take: Yes	Acquisition of habitat: Yes; conservation programs include acquisition of habitat §1903	Time Limit: N/A

within state; includes federal list with concurrence of Wildlife and Fisheries Commission §1902			
Subspecies: No	Transport: Yes		
Candidate Species: No	Sale: Yes		
Emergency Listing: Yes §1904	Possess: Yes		
CONSULTATION	LANDOWNER INCENTIVES	PERMITS §1904	PENALTIES
Yes/No: No	Yes/No: No	Scientific: Yes Educational: No Propagation: Yes Zoological: No Other: No; but "regulated taking"	Class 6 violation for violation of any provision §1907
What entities: N/A	Type: N/A	Incidental Take: No	
PLANTS	UNIQUE PROVISIONS		
Yes/No: Yes §1904	Endangered Species stamp program §1906		
What provisions: No willful destruction or harvest without landowner permission or state permit			

Maine

Me. Rev. Stat. Ann. 12 §§12801-12810 (originally enacted 1971) (animals)

LISTING	PROHIBITIONS §12808	CRITICAL HABITAT	RECOVERY PLANS
Who does it: Recommended by Commission of Inland Fisheries & Wildlife; Legislature has sole authority to designate §12803	Import/export: Yes (export only)	Yes/No: Not required; but Commissioner has authority to designate "essential habitat" §12804	Yes/No: No; but Commission may develop "protection guidelines" by rule §12804
How often: No time limit			
Criteria: Fish and wildlife found in the state §12802	Take: Yes; "hunt, trap, harass, or possess"	Acquisition of habitat: Yes; conservation program includes acquisition of land §12804	Time Limit: N/A
Subspecies: Yes	Transport: Yes		
Candidate Species: No	Sale: Yes		
Emergency Listing: No	Possess: Yes		
CONSULTATION	LANDOWNER INCENTIVES	PERMITS §12808-A	PENALTIES §12808
Yes/No: Yes; to avoid significant alteration of habitat or violation of protection guidelines; variance authorized if no significant risk §12806	Yes/No: No	Scientific: Yes Educational: Yes Propagation: Yes Zoological: No Other: Yes; conservation or transportation	Class E crime for negligent acts; \$1,000 fine
What entities: State agencies, municipal governments	Type: N/A	Incidental Take: Yes	Class D crime for intentional acts; \$2,000 fine
			AG can seek injunctive relief and restoration §12809

PLANTS	UNIQUE PROVISIONS		
Yes/No: Yes; see separate plants summary	Location of species may be determined to be confidential §12804		
What provisions: N/A	Prohibited acts for delisted species §12810		

Maine - Plants			
Me. Rev. Stat. Ann. §544-B (originally enacted 1993) (plants)			
LISTING	PROHIBITIONS §544-B	CRITICAL HABITAT	RECOVERY PLANS
Who does it: Commissioner of Conservation §544-B	Import/export: No	Yes/No: No	Yes/No: No
How often:			
Criteria: Rare plant species within state based on established criteria §544-B	Take: No; purpose of list is informational only §544-B	Acquisition of habitat: No	Time Limit:
Subspecies: Yes §544-B	Transport: No		
Candidate Species: No	Sale: No		
Emergency Listing: No	Possess: No		
CONSULTATION	LANDOWNER INCENTIVES	PERMITS	PENALTIES
Yes/No: No	Yes/No: No	Scientific: No Educational: No Propagation: No Other: No	
What entities: N/A	Type: N/A	Incidental Take: No	

Maryland

"NONGAME AND ENDANGERED SPECIES CONSERVATION ACT"
Md. Nat. Res. Ann §§10-2A-01 to -09 (originally enacted 1972) (animals)

LISTING	PROHIBITIONS §§10-2A-03, -05	CRITICAL HABITAT	RECOVERY PLANS
Who does it: Secretary of Department of Natural Resources §10-2A-04	Import/export: Yes (export only)	Yes/No: Yes; Secretary has authority to designate §10-2A-06	Yes/No: No
How often: No time limit			
Criteria: Wildlife or plant species whose continued existence as a viable component in state is in jeopardy §§10-2A-01, -04	Take: Yes (animals only); "harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, collect"	Acquisition of habitat: Yes; conservation programs include acquisition of habitat §10-2A-06	Time Limit: N/A
Subspecies: Yes §10-2A-01	Transport: Yes		
Candidate Species: No	Sale: Yes		
Emergency Listing: Yes §10-2A-04	Possess: Yes		
CONSULTATION	LANDOWNER INCENTIVES	PERMITS §10-2A-05	PENALTIES
Yes/No: Yes; must insure that actions do not jeopardize continued existence of species or harm habitat §10-2A-06	Yes/No: No	Scientific: Yes Educational: No Propagation: Yes Zoological: No Other: No	Up to \$1,000 and/or 1yr. jail; seizure, forfeiture §10-2A-07
What entities: State departments and agencies	Type: N/A	Incidental Take: Yes; for specified species §10-2A-05.1	

PLANTS	UNIQUE PROVISIONS		
Yes/No: Yes; in definition of species §10-2A-01			
What provisions: Can't export, possess, process, sell, transport §10-2A-05			

Maryland - Fish			
"ENDANGERED SPECIES OF FISH CONSERVATION ACT" Md. Nat. Res. Code Ann. §§ 4-2A-01 to -09 (originally enacted 1975) (fish)			
LISTING	PROHIBITIONS §§4-2A-03, -05	CRITICAL HABITAT	RECOVERY PLANS
Who does it: Secretary of Department of Natural Resources §4-2A-04	Import/export: Yes (export only)	Yes/No: Yes §4-2A-06	Yes/No: No
How often: N/A			
Criteria: Any species whose continued viability as part of state's fish resources is in jeopardy; plus federal list §§4-2A-01, -04	Take: Yes; "harass, harm, pursue, shoot, wound, kill, trap, capture or collect"	Acquisition of habitat: Yes; conservation programs include acquisition of habitat §4-2A-06	Time Limit: N/A
Subspecies: Yes; or smaller taxa §4-2A-01	Transport: Yes		
Candidate Species: No	Sale: Yes		
Emergency Listing: Yes §4-2A-04	Possess: Yes		
CONSULTATION	LANDOWNER INCENTIVES	PERMITS §4-2A-05	PENALTIES
Yes/No: Yes; must insure that actions do not jeopardize continued existence of species or	Yes/No: No	Scientific: Yes Educational: No Propagation: Yes Zoological: No	Up to \$1,000 and/or 1 yr. jail; seizure, forfeiture §4-2A-07

harm habitat §4-2A-06		Other: Yes; aquaculture	
What entities: State departments and agencies	Type: N/A	Incidental Take: No; but moratoriums on certain species may be removed §4-2A-05.1	
PLANTS	UNIQUE PROVISIONS		
Yes/No: N/A			
What provisions: N/A			

Massachusetts			
"MASSACHUSETTS ENDANGERED SPECIES ACT" Mass. Gen. Law Ann. 131A §§1 to 7 (1990) (originally enacted 1972)			
LISTING	PROHIBITIONS §2	CRITICAL HABITAT	RECOVERY PLANS
Who does it: Director of Division of Fisheries & Wildlife §4	Import/export: Yes (export only)	Yes/No: Yes; "significant habitats"; must be designated on a yearly basis §4	Yes/No: No
How often: Every 5 years §4			
Criteria: Plant or animal in danger throughout all or a significant portion of range; plus federal list §1	Take: Yes; includes disruption of nesting, breeding, feeding or migratory activity §1	Acquisition of habitat: Yes	Time Limit: N/A
Subspecies: Yes §1	Transport: Yes		
Candidate Species: Yes; "special concern" §1	Sale: Yes		
Emergency Listing: No	Possess: Yes		
CONSULTATION	LANDOWNER INCENTIVES	PERMITS §3	PENALTIES §6

<p>Yes/No: Yes; all "agencies, departments, boards, commissions and authorities" must review the impact of their projects and "use all practical means and measures to avoid or minimize damage" to state-listed species §4</p>	<p>Yes/No: No</p>	<p>Scientific: Yes Educational: Yes Propagation: Yes Zoological: No Other: Yes; conservation management and to protect human health</p>	<p>- Violation of prohibitions-not less than \$500 and/or up to 90 days in jail (1st conviction) \$5-10,000 and/or 180 days in jail (2nd conviction) - Alteration of habitat-\$1,000-10,000 and/or 90 days jail (1st conviction) \$10,000-20,000 and/or up to 180 days jail (2nd conviction) plus restoration of habitat</p>
<p>What entities: see above</p>	<p>Type: N/A</p>	<p>Incidental Take: Yes; habitat alteration permits required §5; not needed for normal use of land for agriculture</p>	
<p>PLANTS</p>	<p>UNIQUE PROVISIONS</p>		
<p>Yes/No: Yes; in definition of species §1</p>	<p>Permits construction of single family dwelling on lots existing prior to 1990 §3</p>		
<p>What provisions: Same as above; exceptions for possessing or propagating plants not from wild sources; take = collect, pick, kill, transplant, cut or process §3</p>			

Michigan

"ENDANGERED SPECIES ACT OF 1974"

Mich. Comp. Laws. Ann. §§324.36501 to .36507 (originally enacted 1974)

LISTING	PROHIBITIONS §36505	CRITICAL HABITAT	RECOVERY PLANS
Who does it: Dept. of Natural Resources §36503	Import/export: Yes	Yes/No: No	Yes/No: No
How often: Every 2 years §36503			
Criteria: Fish, plants, and wildlife that are threatened or endangered within the state; plus federal list §§36503, 36505	Take: Yes; "harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, collect" (animals) §36501	Acquisition of habitat: Yes; management programs include acquisition of land §36504	Time Limit: N/A
Subspecies: Yes §36501	Transport: Yes		
Candidate Species: No; but "closely resembles" §36505	Sale: Yes		
Emergency Listing: No	Possess: Yes		
CONSULTATION	LANDOWNER INCENTIVES	PERMITS §36505	PENALTIES
Yes/No: No	Yes/No: No	Scientific: Yes Educational: Yes Propagation: Yes Zoological: Yes Other: Yes; to alleviate damage to property or protect human health; controlled harvest allowed when abundance of species exists	Misdemeanor; fine of \$100-1,000 and/or up to 90 days jail §36507
What entities: N/A	Type: N/A	Incidental Take: No	

PLANTS	UNIQUE PROVISIONS		
Yes/No: Yes; in definitions of species §36501	Species that "closely resembles" listed species may be protected §36505		
What provisions: Same as above; take = collect, pick, cut, dig up, destroy			

Minnesota			
Minn. Stat. Ann. §§84.0895, 84.944, 97A.245, 97A.501 (originally enacted 1971)			
LISTING	PROHIBITIONS §§84.0895, 97A.501	CRITICAL HABITAT	RECOVERY PLANS
Who does it: Commissioner of Natural Resources §84.0895	Import/export: Yes (import only)	Yes/No: Yes §84.944	Yes/No: No
How often: Every 3 years §84.0895			
Criteria: Species threatened with extinction throughout all or a significant portion of its range §84.0895	Take: Yes	Acquisition of habitat: Yes; management includes habitat acquisition §84.0895	Time Limit: N/A
Subspecies: No	Transport: Yes		
Candidate Species: Yes; species of "special concern" §84.0895	Sale: Yes		
Emergency Listing: No	Possess: Yes		
CONSULTATION	LANDOWNER INCENTIVES	PERMITS §84.0895	PENALTIES

		Scientific: Yes Educational: Yes Propagation: Yes Zoological: Yes Other: Yes; to prevent injury to persons or property; if social & economic benefits outweigh harm caused by taking	Misdemeanor §84.0895
Yes/No: No	Yes/No: No		
What entities: N/A	Type: N/A	Incidental Take: No	
PLANTS	UNIQUE PROVISIONS		
Yes/No: Yes; in definition of species §84.0895	State may pay a reward up to \$1,000 for information leading to convictions of take violations §97A.245		
What provisions: Prohibitions don't apply to accidental taking or plants on certain classified lands §84.0895			

Mississippi			
"THE NONGAME & ENDANGERED SPECIES CONSERVATION ACT" Miss. Code. Ann. §§49-5-101 to -119 (originally enacted 1974)			
LISTING	PROHIBITIONS §49-5-109	CRITICAL HABITAT	RECOVERY PLANS
Who does it: Commission on Wildlife, Fisheries & Parks §49-5-109	Import/export: Yes (export only)	Yes/No: No	Yes/No: No
How often: Every 2 years §49-5-109			

Criteria: Species whose prospects for survival within the state are in jeopardy; plus federal list §49-5-105	Take: Yes; "harass, hunt, capture, kill" §49-5-105	Acquisition of habitat: Yes; management programs include acquisition of habitat §§49-5-105, -111	Time Limit: N/A
Subspecies: Yes §49-5-105	Transport: Yes		
Candidate Species: No	Sale: Yes		
Emergency Listing: No	Possess: Yes		
CONSULTATION	LANDOWNER INCENTIVES	PERMITS §49-5-111	PENALTIES
Yes/No: No; but the Governor shall "encourage" state and federal agencies to further conservation efforts with their authority §49-5-111	Yes/No: No	Scientific: Yes Educational: Yes Propagation: Yes Zoological: Yes Other: Yes; "other special purposes" or for immediate threat to human life	Class I violation; plus search, seizure, and forfeiture §49-5-115
What entities: N/A	Type: N/A	Incidental Take: No	
PLANTS	UNIQUE PROVISIONS		
Yes/No: No	Endangered Species Stamps authorized §49-5-119		
What provisions: N/A			

Missouri

Mo. Ann. Stat. §252.240 (originally enacted 1972)

LISTING	PROHIBITIONS §252.240(1)	CRITICAL HABITAT	RECOVERY PLANS
Who does it: Dept. of Conservation §252.240	Import/export: Yes (import only)	Yes/No: No	Yes/No: No
How often: No time limit			
Criteria: Species designated by the Dept. of Conservation; plus federal list §252.240(1)	Take: No; but in regulation	Acquisition of habitat: No	Time Limit:
Subspecies: No	Transport: Yes		
Candidate Species: No	Sale: Yes		
Emergency Listing: No	Possess: Yes		
CONSULTATION	LANDOWNER INCENTIVES	PERMITS	PENALTIES
Yes/No: No	Yes/No: No	Scientific: No Educational: No Propagation: No Zoological: No Other: No	Class B misdemeanor §252.240(6)
What entities: N/A	Type: N/A	Incidental Take: No	
PLANTS	UNIQUE PROVISIONS		
Yes/No: Yes; in definitions of species §252.240(2)	Publicly owned and operated zoos are exempt from statute §252.240(4)		
What provisions: Prohibits export, transport, sale §252.240(2); also prohibits taking of plants without property owner's permission 252.240(5)			

Montana

"THE NONGAME & ENDANGERED SPECIES CONSERVATION ACT"

Mont. Code. Ann. §§87-5-101 to -132 (originally enacted 1973)

LISTING	PROHIBITIONS §87-7-106	CRITICAL HABITAT	RECOVERY PLANS
Who does it: Dept. of Fish & Game recommends to Legislature §87-5-107	Import/export: Yes (export only)	Yes/No: No	Yes/No: No
How often: Every 2 years §87-5-107			
Criteria: Species indigenous to the state and "actively" threatened with extinction; may include federal list §87-5-107	Take: Yes; "harass, hunt, capture, kill" §87-5-102	Acquisition of habitat: Yes; management programs include acquisition of habitat §87-5-108	Time Limit: N/A
Subspecies: Yes §87-5-102	Transport: No		
Candidate Species: No	Sale: Yes		
Emergency Listing: No	Possess: Yes		
CONSULTATION	LANDOWNER INCENTIVES	PERMITS §87-5-109	PENALTIES §87-5-11
Yes/No: No; but Governor shall "encourage" other agencies to further the purposes of the Act §87-5-108	Yes/No: No	Scientific: Yes Educational: Yes Propagation: Yes Zoological: Yes Other: Yes; to alleviate damage to property or protect human health	Misdemeanor; 1st offense up to \$250; 2nd up to to \$500 and/or 30 days; 3rd \$500-1,000 and/or 6 months; plus seizure and forfeiture
What entities: N/A	Type: N/A	Incidental Take: No; but limited take for commercial purposes §87-5-116	

PLANTS	UNIQUE PROVISIONS		
Yes/No: No	Establishes nongame wildlife account §87-5-121		

Nebraska			
"NONGAME & ENDANGERED SPECIES CONSERVATION ACT" Neb. Rev. Stat. §§37-801 to -811 (originally enacted 1971)			
LISTING	PROHIBITIONS §37-805	CRITICAL HABITAT	RECOVERY PLANS
Who does it: Game & Parks Commission §37-805	Import/export: Yes (export only)	Yes/No: Yes §37-807	Yes/No: No
How often: No time limit, but the "Commission shall conduct continuing investigations of nongame wildlife" §37-805	Take: Yes; "harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, collect" §37-802	Acquisition of habitat: Yes; but can't use eminent domain; conservation programs include acquisition of habitat §37-807	Time Limit: N/A
Criteria: Wildlife or plants whose continued existence as a viable component in the state is in jeopardy; includes federal list §§37-802, -806	Transport: Yes		
Subspecies: Yes; "smaller taxa in common spatial arrangement that interbreed when mature" §37-802	Sale: Yes		
Candidate Species: No	Possess: Yes		
Emergency Listing: Yes §37-806			

CONSULTATION	LANDOWNER INCENTIVES	PERMITS §37-806	PENALTIES
Yes/No: Yes; state agencies must insure that actions do not jeopardize species or modify critical habitat §37-807	Yes/No: No	Scientific: Yes Educational: No Propagation: Yes Zoological: No Other: Yes; survival	Class I and class II misdemeanors; search & seizure §37-809
What entities: State agencies	Type: N/A	Incidental Take: No	
PLANTS	UNIQUE PROVISIONS		
Yes/No: Yes; in definition of species §37-802	Wildlife Conservation Fund §37-811		
What provisions: Prohibitions on export, possession, sale only (no take prohibition) §37-434	Income tax check-off §37-804		

Nevada			
Nev. Rev. Stat. Ann. §503.584 to .589 (originally enacted 1969) (animals)			
LISTING	PROHIBITIONS §503.585	CRITICAL HABITAT	RECOVERY PLANS
Who does it: Wildlife Commission §503.585	Import/export: No	Yes/No: No	Yes/No: No
How often: No time limit	Take: Yes; no destruction of species "at any time by any means, except under special permit" §503.585	Acquisition of habitat: No	Time Limit: N/A
Criteria: Native fish, wildlife and other fauna whose existence is endangered §503.585	Transport: No		

Subspecies: Yes §503.585	Sale: No		
Candidate Species: No	Possess: No		
Emergency Listing: No			
CONSULTATION	LANDOWNER INCENTIVES	PERMITS §§503.585, .586	PENALTIES
Yes/No: No; but Governor shall "encourage" state agencies to utilize their programs in furtherance of the Act §503.588	Yes/No: No	Scientific: No Educational: No Propagation: No Zoological: No Other: Yes; destruction or removal allowed if species is destructive to domestic animals or fowl or a menace to health	
What entities: N/A	Type: N/A	Incidental Take: No; but agency director has discretion to issue a "special permit" §503.585	
PLANTS	UNIQUE PROVISIONS		
Yes/No: Yes; see separate plants summary			
What provisions: N/A			

Nevada - Plants

Nev. Rev. Stat. Ann. §§527.260 to .300 (originally enacted 1969) (plants)

LISTING	PROHIBITIONS	CRITICAL HABITAT	RECOVERY PLANS
Who does it: State Forester Firewarden §527.270	Import/export: No	Yes/No: No; but see regs regarding management areas	Yes/No: No
How often: N/A	Take: Yes; removal or destruction prohibited without special permit and written consent of landowner §§527.270, .050	Acquisition of habitat: Yes	Time Limit: N/A
Criteria: Native flora §527.270	Transport: No		
Subspecies: Yes §527.270	Sale: No		
Candidate Species: No	Possess: No		
Emergency Listing: No			
CONSULTATION	LANDOWNER INCENTIVES	PERMITS	PENALTIES
Yes/No: No; but Governor shall "encourage" state agencies to utilize their programs in furtherance of the Act §527.290	Yes/No: No	Scientific: Yes Educational: No Propagation: No Other: No	Public offense proportionate to the value of the plant; no less than a misdemeanor §527.050
What entities: N/A	Type: N/A	Other: Yes; destruction or removal allowed if species is dangerous to domestic animals or fowl or a menace to health §527.280	
		Incidental Take: No	

	UNIQUE PROVISIONS		
	State Forester Firewarden shall cooperate with other states and counties in carrying out the Act §527.300		
	Take prohibitions don't apply to Native Americans gathering plants for food, medicine, or ceremonial use §527.050		

New Hampshire			
"ENDANGERED SPECIES CONSERVATION ACT" N.H. Rev. Stat. Ann. §§212-A:1 to :16 (originally enacted 1979)			
LISTING	PROHIBITIONS §212-A:9	CRITICAL HABITAT	RECOVERY PLANS
Who does it: Director of Fish & Game Dept. §212-A:6	Import/export: Yes (export only)	Yes/No: Yes; for purposes of consultation §212-A:9	Yes/No: No
How often: No time limit, but "upon petition of an interested person who presents substantial evidence that warrants a review" §212-A:6	Take: Yes	Acquisition of habitat: Yes; conservation programs include acquisition of habitat §212-A:9	Time Limit: N/A
Criteria: Wildlife normally occurring within the state; includes federal list §212-A:6	Transport: Yes		
Subspecies: No	Sale: Yes		
Candidate Species: No	Possess: Yes		
Emergency Listing: Yes §212-A:6			

CONSULTATION	LANDOWNER INCENTIVES	PERMITS §212-A:7	PENALTIES
<p>Yes/No: No; but state agencies must "to the extent possible" not jeopardize the continued existence of listed species §212-A:9</p>	<p>Yes/No: No</p>	<p>Scientific: Yes Educational: No Propagation: Yes Zoological: No Other: Yes; survival</p>	<p>Misdemeanor plus seizure and forfeiture §212-A:10</p>
<p>What entities: N/A</p>	<p>Type: N/A</p>	<p>Incidental Take: No</p>	
PLANTS	UNIQUE PROVISIONS		
<p>Yes/No: Yes; see separate plants summary</p>	<p>-State can restrict boat traffic to protect species "in earliest stages of life" §212-A:5</p> <p>-Must notify Governors of border states before listing §212-A:6</p> <p>-Marine & estuarine species are exempt from law §212-A:13</p> <p>-No rules shall cause undue interference with normal agriculture or silvicultural practices, or siting/construction of energy facilities §212-A:13</p> <p>-Funding can't come from hunting, fishing or trapping licenses unless species was legally hunted, etc. in the last five years §212-A:15</p> <p>-Threatened and Endangered</p>		

	Species Mitigation Fund §212-A:16		
What provisions: N/A			

New Hampshire - Plants			
"NEW HAMPSHIRE NATIVE PLANT PROTECTION ACT OF 1987" N.H. Rev. Stat. Ann. §§217-A:1 1 to :12 (originally enacted 1987)			
LISTING	PROHIBITIONS §217-A:9	CRITICAL HABITAT	RECOVERY PLANS
Who does it: Commissioner of Dept. of Natural and Cultural Resources §217-A:5	Import/export: Yes	Yes/No: No	Yes/No: No
How often: N/A	Take: Yes; but take is allowed by private property owners on their land	Acquisition of habitat: Yes §217-A:6	Time Limit: N/A
Criteria: Native plants in danger throughout all or a portion of their range §217-A:3	Transport: Yes		
Subspecies: Yes §217-A:3	Sale: Yes		
Candidate Species: No	Possess: Yes		
Emergency Listing: No			
CONSULTATION	LANDOWNER INCENTIVES	PERMITS §217-A:10	PENALTIES §§217-A:11, :12
Yes/No: Yes; state agencies shall not jeopardize the continued existence of listed species §217-A:7	Yes/No: No	Scientific: Yes Educational: No Propagation: Yes Other: Yes; if needed for conservation of exemplary natural	Guilty of a violation for each separate incident; search, seizure, forfeiture authorized

		communities	
What entities: All state agencies	Type: N/A		
		Incidental Take: No	

New Jersey			
"THE ENDANGERED & NONGAME SPECIES CONSERVATION ACT" N.J. Stat. Ann. §§23.2A-1 to -16 (originally enacted 1973) (animals)			
LISTING	PROHIBITIONS	CRITICAL HABITAT	RECOVERY PLANS
Who does it: Commissioner of Dept. of Environmental Protection §23: 2A-4	Import/export: Yes	Yes/No: No	Yes/No: No
How often: No time limit, but "the commissioner shall periodically review the state list" §23: 2A-4	Take: Yes; "harass, hunt, capture, kill" §23:2A-3	Acquisition of habitat: Yes §23:2A-7	Time Limit: N/A
Criteria: Commissioner may list species that are endangered; includes federal list §23:2A-4	Transport: Yes		
Subspecies: Yes §23:2A-3	Sale: Yes		
Candidate Species: No	Possess: Yes		
Emergency Listing: No			
CONSULTATION	LANDOWNER INCENTIVES	PERMITS §23:2A-7	PENALTIES

Yes/No: No	Yes/No: No	Scientific: Yes Educational: Yes Propagation: Yes Zoological: Yes Other: Yes; "other special purposes" plus biomedical research §23:2A-6.2	Criminal penalty - \$5,000 to \$50,000 and/or imprisonment Civil penalty - up to \$25,000 plus compensatory damages and injunctive relief §23:2A-10
What entities: N/A	Type: N/A	Incidental Take: No	
PLANTS	UNIQUE PROVISIONS		
Yes/No: N/A	Prohibitions on CITES species, ivory trafficking §§23:2A-13.1 to -13.4		
What provisions: Yes; see separate plants summary	Prohibitions on interference with department personnel §23:2A-8		

New Jersey - Plants			
"ENDANGERED PLANT SPECIES LIST ACT" N.J. Stat. Ann. §§13:1B-15.151 to 15.162 (originally enacted 1989) (plants)			
LISTING	PROHIBITIONS	CRITICAL HABITAT	RECOVERY PLANS
Who does it: Div. of Parks and Forestry in Dept. of Environmental Protection §15.154	Import/export: No	Yes/No: No	Yes/No: No
How often:	Take: No; educational and informational programs only §15.157	Acquisition of habitat: No	Time Limit:

Criteria: Native plant species whose survival in state is in jeopardy; includes federal list §15.153	Transport: No		
Subspecies: Yes §15.153	Sale: No		
Candidate Species: No	Possess: No		
Emergency Listing: No			
CONSULTATION	LANDOWNER INCENTIVES	PERMITS	PENALTIES
Yes/No: No	Yes/No: No	Scientific: No Educational: No Propagation: No Other: No	
What entities: N/A	Type: N/A	Incidental Take: No	

New Mexico			
"WILDLIFE CONSERVATION ACT" N.M. Stat. Ann. §§17-2-37 to -46 (originally enacted 1974) (animals)			
LISTING	PROHIBITIONS	CRITICAL HABITAT	RECOVERY PLANS
Who does it: State Game Commission from recommendation by Director of Dept. of Game and Fish §17-2-41	Import/export: Yes (export only)	Yes/No: No	Yes/No: Yes; "to the extent practicable" §17-2-40.1
How often: Every 2 years §17-2-40	Take: Yes; "harass, hunt, capture, or kill"	Acquisition of habitat: Yes §§17-2-42, -44	Time Limit: 2 yrs. from date species listed; multi species plans encouraged; includes social and economic analysis/mitigation

Criteria: Wildlife whose prospects for survival or recruitment within the state are in jeopardy; Commission may adopt federal list §§17-2-38, -41			
	Transport: Yes		
Subspecies: Yes §17-2-38	Sale: Yes		
Candidate Species: No	Possess: Yes		
Emergency Listing: Yes §17-2-40			
CONSULTATION	LANDOWNER INCENTIVES	PERMITS §17-2-42	PENALTIES §§17-2-45, -46
		Scientific: Yes Educational: Yes Propagation: Yes Zoological: Yes Other: No permit needed to protect private property or to protect human health	-Misdemeanor (\$1000 and/or 3 days to 1 yr. jail for take violation; \$50-300 and/or up to 90 days jail for permit violation) -Search and seizure -Check point stations
Yes/No: No	Yes/No: No		
What entities: N/A	Type: N/A	Incidental Take: No	
PLANTS	UNIQUE PROVISIONS		
Yes/No: Yes; see separate plants summary	Peer review panel used in listing process §17-2-40		
What provisions: N/A			

New Mexico - Plants

"ENDANGERED PLANT SPECIES ACT"

N.M. Stat. Ann. §75-6-1 (originally enacted 1985) (plants)

LISTING	PROHIBITIONS §75-6-1D	CRITICAL HABITAT	RECOVERY PLANS
Who does it: Energy, Minerals, and Natural Resources Dept. §75-6-1B	Import/export: Yes (export only)	Yes/No: No	Yes/No: No
How often: N/A	Take: Yes	Acquisition of habitat: No	Time Limit: N/A
Criteria: Any plant species whose prospects of survival in state are in jeopardy; plus federal list §75-6-1A	Transport: Yes		
Subspecies: No	Sale: Yes		
Candidate Species: No	Possess: Yes		
Emergency Listing: No			
CONSULTATION	LANDOWNER INCENTIVES	PERMITS §75-6-1E	PENALTIES §75-6-1D
Yes/No: No	Yes/No: No	Scientific: Yes Educational: No Propagation: Yes Other: No	Misdemeanor (\$300-1,000 and/or up to 120 days jail)
What entities: N/A	Type: N/A	Incidental Take: No	

New York

N.Y. Evtl. Conserv. Law §§11-0535, -0536, -0103 (originally enacted 1972) (animals)

LISTING	PROHIBITIONS §11-0535(2)	CRITICAL HABITAT	RECOVERY PLANS
Who does it: Dept. of Environmental Conservation §11-0535(1)	Import/export: Yes (import only)	Yes/No: No	Yes/No: No; but authorized by regulation
How often: No time limit	Take: Yes; "pursue, hunt, kill, capture, trap, harry, disturb or worry" §11-0103	Acquisition of habitat: No	Time Limit: N/A
Criteria: Those species threatened with extinction...throughout all or part of their range; plus federal list §11-0535(1)	Transport: Yes		
Subspecies: No	Sale: Yes		
Candidate Species: Yes; "species of special concern" and "vulnerable species" §§11-0535, -0535-b	Possess: Yes		
Emergency Listing: No			
CONSULTATION	LANDOWNER INCENTIVES	PERMITS §11-0535(2)	PENALTIES §71-0925
Yes/No: No	Yes/No: No	Scientific: No Educational: No Propagation: Yes Zoological: No Other: No	Not more than \$4,000 for each violation, plus \$700 for each animal involved in the violation
What entities: N/A		Incidental Take: No; but authorized by regulation	
PLANTS	UNIQUE		

	PROVISIONS		
Yes/No: N/A	Prohibits sale of specified wild animal parts §11-0536		
What provisions: Yes; see separate plants summary	Prohibits sale of ivory §11-0535-a		
	Threatened and Endangered Species Mitigation Fund § 11-0535-c		

New York - Plants			
N.Y. Env'tl. Conserv. Law §9-1503 (originally enacted 1974) (plants)			
LISTING	PROHIBITIONS §9-1503(3)	CRITICAL HABITAT	RECOVERY PLANS
Who does it: Dept. of Environmental Conservation §9-1503(2)	Import/export: No	Yes/No: No	Yes/No: No
How often: N/A	Take: Yes; "pick, pluck, sever, remove, damage or carry away" without consent of landowner	Acquisition of habitat: No	Time Limit: N/A
Criteria: Species in danger of extinction throughout all or portion of range within the state §9-1503(1)	Transport: No		
Subspecies: No	Sale: No		
Candidate Species: Yes; "rare species," "exploitably vulnerable species" §9-1503(1)	Possess: No		
Emergency Listing: No			

CONSULTATION	LANDOWNER INCENTIVES	PERMITS	PENALTIES
Yes/No: No	Yes/No: No	Scientific: No Educational: No Propagation: No Other: No	Fine up to \$25 §9-1503(3)
What entities: N/A	Type: N/A	Incidental Take: No	

North Carolina			
N.C. Gen. Stat. §§113-331 to -350 (originally enacted 1987) (animals)			
LISTING	PROHIBITIONS §113-337	CRITICAL HABITAT	RECOVERY PLANS
Who does it: Wildlife Resources Commission §113-333	Import/export: Yes (export only)	Yes/No: No; but critical habitat areas may be recommended by advisory committee §113-336	Yes/No: Yes; can't restrict use or development of private property §113-333
How often: No time limit, but a proposal to remove or add a species to the list may be done after the Wildlife Advisory Committee considers a report on the status of a candidate species from the Scientific Council §113-334	Take: Yes §113-130	Acquisition of habitat: Yes §113-331	Time Limit: None
Criteria: Native species whose continued existence in state is in jeopardy; includes federal list §§113-331, -334	Transport: Yes		
Subspecies: No	Sale: Yes		
Candidate Species: Yes; "special concern" §113-331	Possess: Yes		

Emergency Listing: No			
CONSULTATION	LANDOWNER INCENTIVES	PERMITS	PENALTIES
Yes/No: No	Yes/No: No	Scientific: No Educational: No Propagation: No Zoological: No Other: No, but as authorized by regulation §113-337	Class 1 misdemeanor §113-337
What entities: N/A	Type: N/A	Incidental Take: No	
PLANTS	UNIQUE PROVISIONS		
Yes/No: Yes; see separate plants summary	NC Zoological Park is exempted from statute §113-332		
What provisions: N/A			

North Carolina - Plants			
"PLANT PROTECTION & CONSERVATION ACT" §§106-202.12 to .22 (originally enacted 1979) (plants)			
LISTING	PROHIBITIONS §106-202.19	CRITICAL HABITAT	RECOVERY PLANS
Who does it: North Carolina Plant Conservation Board §106-202.15	Import/export: Yes (export only)	Yes/No: No	Yes/No: No
How often: N/A	Take: Yes; can't remove ("uproot, dig, take, or otherwise disturb") without written consent of owner §106-202.19	Acquisition of habitat: Yes §106-202.15	Time Limit: N/A

Criteria: Species whose continued existence is determined to be in jeopardy; plus federal list §§106-202.12, .16	Transport: No		
Subspecies: No	Sale: Yes		
Candidate Species: Yes; "special concern species" §106-202.12	Possess: No		
Emergency Listing: No			
CONSULTATION	LANDOWNER INCENTIVES	PERMITS	PENALTIES
Yes/No: No	Yes/No: No	Scientific: No Educational: No Propagation: No Other: No	Class 2 misdemeanor; plus civil penalties for subsequent offenses; injunctive relief authorized §106-202.19
What entities: N/A	Type: N/A	Incidental Take: Yes; incidental disturbance for agriculture, forestry, or development is not illegal so long as not for commercial use §106-202.19	

North Dakota

N.D. Cent. Code §§20.1-01-02, 20.1-02-05, 20.1-09-02 (originally enacted 1973)

LISTING	PROHIBITIONS	CRITICAL HABITAT	RECOVERY PLANS
Who does it: Director of Game and Fish Dept. §20.1-02-05	Import/export: No	Yes/No: No	Yes/No: No
How often: No time limit	Take: No	Acquisition of habitat: Yes; general authority §20.1-02-05	Time Limit: N/A
Criteria: Species whose prospects of survival or recruitment are in jeopardy; includes federal list §§20.1-01-02, 20.1-02-05	Transport: No		
Subspecies: Yes §20.1-01-02	Sale: No		
Candidate Species: No	Possess: No		
Emergency Listing: No			
CONSULTATION	LANDOWNER INCENTIVES	PERMITS	PENALTIES
Yes/No: No	Yes/No: No	Scientific: No Educational: No Propagation: Yes §20.1-09-02 Zoological: No Other: No	Class B misdemeanor §20.1-02-05
What entities: N/A		Incidental Take: No	
PLANTS	UNIQUE PROVISIONS		
Yes/No: No			
What provisions: N/A			

Ohio

Ohio. Rev. Code Ann. §§1531.25 -.26, 1531.99 (originally enacted 1979) (animals)

LISTING	PROHIBITIONS	CRITICAL HABITAT	RECOVERY PLANS
Who does it: Chief of Division of Wildlife with approval of Wildlife Council §1531.25	Import/export: No	Yes/No: No	Yes/No: No
How often: No time limit	Take: No, but authorizes rules to prohibit taking §1531.25	Acquisition of habitat: Yes §1531.26	Time Limit: N/A
Criteria: Native wildlife threatened with statewide extinction; plus federal list §1531.25	Transport: No		
Subspecies: No	Sale: No		
Candidate Species: No	Possess: No		
Emergency Listing: No			
CONSULTATION	LANDOWNER INCENTIVES	PERMITS §1531.25	PENALTIES
Yes/No: No	Yes/No: No	Scientific: No; requires adoption of rules Educational: No; requires adoption of rules Propagation: No; requires adoption of rules Zoological: No; requires adoption of rules Other: No	1st degree misdemeanor; authorizes seizure, forfeiture, restitution §1531.99
What entities: N/A	Type: N/A	Incidental Take: No	

PLANTS	UNIQUE PROVISIONS		
Yes/No: Yes; see separate plants summary	Nongame & Endangered Wildlife Fund §1531.26		
What provisions: N/A			

Ohio - Plants			
Ohio Rev. Code. Ann. §§1518.01 to .05, 1518.99 (originally enacted 1978) (plants)			
LISTING	PROHIBITIONS	CRITICAL HABITAT	RECOVERY PLANS
Who does it: Chief of Natural Areas and Preserves §1518.01	Import/export: No	Yes/No: No	Yes/No: No
How often: N/A	Take: Yes; "willfully root up, injure, destroy, remove or carry away" from public lands or without landowner's permission §1518.02	Acquisition of habitat: No	Time Limit: N/A
Criteria: Plants native to Ohio which are in danger of extirpation; plus federal list §1518.01	Transport: No; but authorized by rule		
Subspecies: No	Sale: No; but authorized by rule		
Candidate Species: No	Possess: No		
Emergency Listing: No			
CONSULTATION	LANDOWNER INCENTIVES	PERMITS §1518.03	PENALTIES §1518.99

Yes/No: No	Yes/No: No	Scientific: No, but authorized by rule Educational: No, but authorized by rule Propagation: No, but authorized by rule Other: No, but authorized by rule for botanical purposes	-Minor misdemeanor for taking violation -\$1,000-5,000 fine for 1st offense; \$2,000-10,000 fine for subsequent offense for rule or permit violation
What entities: N/A	Type: N/A	Incidental Take: No	

Oklahoma			
Okla. Stat. Ann. 29 §§2-109; 2-135; 5-402; 5-412 to -412.1, 7-601, -602 (originally enacted 1974)			
LISTING	PROHIBITIONS	CRITICAL HABITAT	RECOVERY PLANS
Who does it: Dept. of Wildlife Conservation §5-412.1	Import/export: Yes §7-602	Yes/No: No	Yes/No: No
How often: No time limit	Take: Yes; possess, hunt, chase, harass, capture, shoot at, wound or kill, take, trap §5-412	Acquisition of habitat: No	Time Limit: N/A
Criteria: Species whose prospects of survival and reproduction are in immediate jeopardy; includes federal list §§2-109, -135	Transport: Yes §7-601		
Subspecies: No	Sale: No		
Candidate Species: No	Possess: Yes		
Emergency Listing: No			
CONSULTATION	LANDOWNER INCENTIVES	PERMITS	PENALTIES

Yes/No: No	Yes/No: No	Scientific: No Educational: No Propagation: No Zoological: No Other: Yes; with permission of Director §5-412	-\$50-200 and/or 10-60 days jail for import/export violation §7-602 -\$25-100 for transport violation §7-601
What entities: N/A	Type: N/A	Incidental Take: No	-\$750-1250 and/or 10-30 days jail for take violation §5-402
PLANT	UNIQUE PROVISIONS		
Yes/No: No	Listed species are published in the general hunting regulations §5-412.1		
What provisions: N/A			

Oregon			
Or. Rev. Stat. Ann. §§496.171 to .192; 496.992; 498.026 (originally enacted 1973) (animals)			
LISTING	PROHIBITIONS §498.026	CRITICAL HABITAT	RECOVERY PLANS
Who does it: Fish & Wildlife Commission §496.172	Import/export: Yes	Yes/No: No	Yes/No: No; but "guidelines" must be set to ensure survival of individual members; management plans required for state lands §496.182
How often: No time limit, but "from time to time may revise" §496.172	Take: Yes	Acquisition of habitat: Yes §496.172	Time Limit: N/A

Criteria: Wildlife species native to state determined by Commission to be threatened or endangered; includes federal list §§496.004, 496.176	Transport: Yes		
Subspecies: Yes §496.004	Sale: Yes		
Candidate Species: No	Possess: No		
Emergency Listing: Yes §496.176			
CONSULTATION	LANDOWNER INCENTIVES	PERMITS §496.172	PENALTIES
Yes/No: Yes §496.182	Yes/No: No	Scientific: No; but established by rule Educational: No Propagation: No Zoological: No Other: No	Class A misdemeanor with enhanced felony provision for subsequent convictions involving certain species §496.992
What entities: State agencies	Type: N/A	Incidental Take: No; but established by rule §496.172	
PLANTS	UNIQUE PROVISIONS		
Yes/No: Yes; see separate plants summary	-Provisions not intended to restrict the use of private land §496.192 -Commission can decide not to list if species is secure enough outside state and is not of "cultural, scientific or commercial significance" to the state §496.176		
What provisions: N/A			

Oregon - Plants

Or. Rev. Stat. Ann §§564.100 to .135; 564.994 (originally enacted 1987) (plants)

LISTING	PROHIBITIONS §564.120	CRITICAL HABITAT	RECOVERY PLANS
Who does it: Director of Agriculture §564.105	Import/export: Yes	Yes/No: No	Yes/No: Yes; "conservation programs" are required to be established by rule §§564.105, .115
How often: N/A	Take: Yes; but can take with permission of landowner	Acquisition of habitat: Yes §564.125	Time Limit: N/A
Criteria: Native species in danger of extinction throughout any significant portion of range; plus federal list §564.100	Transport: Yes; but can take with permission of landowner		
Subspecies: Yes §564.100	Sale: Yes		
Candidate Species: No	Possess: No		
Emergency Listing: Yes §564.110			
CONSULTATION	LANDOWNER INCENTIVES	PERMITS §564.105	PENALTIES
Yes/No: Yes §564.115	Yes/No: No	Scientific: No; but established by rule Educational: No Propagation: No Other: No	Class A misdemeanor §564.994
What entities: State agencies	Type: N/A	Incidental Take: No; but established by rule	
	UNIQUE PROVISIONS		

	Provisions not intended to restrict the use of private land §564.135		
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Pennsylvania

Pa. Stat. Ann. 34 §§102, 2167 (1986) (originally enacted 1971); 2924 (originally enacted 1974) (animals)

LISTING	PROHIBITIONS §§2167, 2924	CRITICAL HABITAT	RECOVERY PLANS
Who does it: Game Commission §2167	Import/export: Yes	Yes/No: No	Yes/No: No
How often: No time limit; by regulation §2167	Take: Yes; "harass, pursue, hunt, shoot, wound, kill, trap, capture, possess, or collect" §102	Acquisition of habitat: No	Time Limit: N/A
Criteria: Any native wild bird or animal threatened with extinction; includes federal list §§102, 2167	Transport: Yes		
Subspecies: Yes §102	Sale: Yes		
Candidate Species: No	Possess: Yes		
Emergency Listing: No			
CONSULTATION	LANDOWNER INCENTIVES	PERMITS §2924	PENALTIES
Yes/No: No	Yes/No: No	Scientific: No Educational: No Propagation: No Zoological: No Other: Yes; by Commission	Misdemeanor for first and second offenses; felony for third or more offenses; forfeiture of hunting privileges §2167
What entities: N/A	Type: N/A	Incidental Take: No	
PLANTS	UNIQUE		

	PROVISIONS		
Yes/No: N/A			
What provisions: Yes; see separate plants summary			

Pennsylvania - Plants			
"WILD RESOURCE CONSERVATION ACT" Pa. Stat. Ann. 32 §§5301 to 5314 (originally enacted 1982) (plants)			
LISTING	PROHIBITIONS §5311	CRITICAL HABITAT	RECOVERY PLANS
Who does it: Dept. of Environmental Resources §5307	Import/export: No	Yes/No: No	Yes/No: No
How often:	Take: Yes; "disturb, pick, take or possess"	Acquisition of habitat: Yes §5310	Time Limit:
Criteria: Species in danger of extinction throughout all or most of its range "if critical habitat is not maintained or it is greatly exploited by man" §5307	Transport: Yes		
Subspecies: Yes §5303	Sale: No		
Candidate Species: Yes; "vulnerable" species §5307	Possess: No		
Emergency Listing: No			
CONSULTATION	LANDOWNER INCENTIVES	PERMITS §5308	PENALTIES §5311

Yes/No: No	Yes/No: No	Scientific: No Educational: No Propagation: No Other: Yes; removal, collection, or transplanting allowed by permit; also for taxonomical and botanical purposes	Fines up to \$200 for violation of prohibitions; fines up to \$100 for destruction of sanctuary
What entities: N/A	Type: N/A	Incidental Take: No	
	UNIQUE PROVISIONS		
	Landowners can designate land as a wild plant sanctuary §5307		

Pennsylvania - Fish			
Pa. Stat. Ann. 30 §§102, 2305; 58 §§75.1 - .5 (originally enacted 1980 - fish)			
LISTING 30 §2305	PROHIBITIONS 58 §75.4	CRITICAL HABITAT	RECOVERY PLANS
Who does it: Exec. Director of Fish and Boat Commission	Import/export: Yes; by special permit only	Yes/No: No	Yes/No: No
How often: N/A	Take: Yes; by special permit only	Acquisition of habitat: No	Time Limit: N/A
Criteria: Threatened with extinction or such small numbers that they may become endangered; includes federal list	Transport: Yes; by special permit only		
Subspecies: Yes	Sale: Yes; by special permit only		

Candidate Species: Yes	Possess: Yes; by special permit only		
Emergency Listing: No			
CONSULTATION	LANDOWNER INCENTIVES	PERMITS 58 §75.4	PENALTIES
Yes/No: No	Yes/No: No	Scientific: Yes Educational: Yes Propagation: Other: Public health and safety; best interest of the species; no adverse impacts	Misdemeanor of the third degree 30 §2305
What entities: N/A	Type: N/A	Incidental Take: No	
	UNIQUE PROVISIONS		
	Sets qualifications for surveyors of listed species 58 §75.5		

Puerto Rico			
"Wildlife Act of 1999" P.R. Code 12 §§107 - 107u			
LISTING	PROHIBITIONS §107d	CRITICAL HABITAT	RECOVERY PLANS
Who does it: Secretary of Dept. of Natural and Environmental Resources §107g	Import/export: No	Yes/No: Yes; "critical natural habitat" §107d	Yes/No: No
Criteria: Species that face a risk of extinction in the wild	Take: Yes (hunt)	Acquisition of habitat: Yes §107h	Time Limit: N/A

Subspecies: Yes	Transport: Yes		
Candidate Species: Yes; "vulnerable" species	Sale: Yes		
Emergency Listing: No	Possess: Yes		
CONSULTATION	LANDOWNER INCENTIVES	PERMITS §§107c, d, n	PENALTIES §107t
Yes/No: Yes; government agencies "shall" consult on actions with a "foreseeable and significant impact" on listed species §107a	Yes/No: No	Scientific: Yes Educational: Yes Propagation: No Zoological: Yes Other: Population control	Felony charges; \$5,000-50,000 and/or imprisonment not less than 90 days and up to 3 years
What entities: N/A	Type: N/A	Incidental Take: No	
PLANTS	UNIQUE PROVISIONS		
Yes/No: Yes	Public policy is declared to be the "protection of all wildlife and in particular the natural habitat of said species" §107a		
What provisions: In definition of species §107			

Rhode Island			
R.I. Gen. Laws §§20-37-1 to -5 (originally enacted 1973)			
LISTING	PROHIBITIONS §20-37-3	CRITICAL HABITAT	RECOVERY PLANS
Who does it: Director of Dept. of Environmental Management §20-37-2	Import/export: Yes	Yes/No: No	Yes/No: No
How often: No time limit	Take: No; "trafficking" only	Acquisition of habitat: No	Time Limit: N/A

Criteria: Any animal or plant declared by the Director; includes federal list §20-37-2	Transport: Yes		
Subspecies: No	Sale: Yes		
Candidate Species: No	Possess: No		
Emergency Listing: No			
CONSULTATION	LANDOWNER INCENTIVES	PERMITS §20-37-3	PENALTIES
Yes/No: No	Yes/No: No	Scientific: Yes Educational: Yes; display Propagation: No Zoological: No Other: No	-Seizure & forfeiture §20-37-4 -Fines of \$500-5,000 and/or 1yr. jail §20-37-5
What entities: N/A	Type: N/A	Incidental Take: No	
PLANTS	UNIQUE PROVISIONS		
Yes/No: Yes; in definition of species §20-37-2			
What provisions: Same as above prohibitions			

South Carolina			
"SOUTH CAROLINA NONGAME & ENDANGERED SPECIES CONSERVATION ACT" S.C. Code Ann. §§50-15 to -90 (originally enacted 1974)			
LISTING	PROHIBITIONS §50-15-20	CRITICAL HABITAT	RECOVERY PLANS
Who does it: Dept. of Natural Resources §50-15-40	Import/export: Yes (export only)	Yes/No: No; but see landowner incentives	Yes/No: No

How often: Every 2 years §50-15-30	Take: Yes "harass, hunt, capture, kill" §50-15-10	Acquisition of habitat: Yes §50-15-40	Time Limit:
Criteria: Wildlife whose survival within state are in jeopardy; includes federal list §§50-15-10, -30	Transport: Yes		
Subspecies: Yes §50-15-10	Sale: Yes		
Candidate Species: No	Possess: Yes		
Emergency Listing: No			
CONSULTATION	LANDOWNER INCENTIVES	PERMITS §50-15-50	PENALTIES §50-15-80
Yes/No: No	Yes/No: Yes; "certified management areas" can qualify landowner for income tax credit §50-15-50	Scientific: Yes Educational: Yes Propagation: Yes Zoological: Yes Other: Yes; "other special purposes"; no permit needed if immediate threat to human life	Misdemeanor - \$1,000 and/or 30 days jail; seizure & forfeiture
What entities: N/A	Type: Tax credit	Incidental Take: No	
PLANTS	UNIQUE PROVISIONS		
Yes/No: No	Separate provisions regulate taking of native reptiles and amphibians, and native turtles §§50-15-15, -70		

South Dakota

S.D. Codified Laws Ann. §§34A-8-1 to -13 (originally enacted 1977)

LISTING	PROHIBITIONS §34A-8-9	CRITICAL HABITAT	RECOVERY PLANS
Who does it: Game, Fish & Parks Commission §34A-8-3	Import/export: Yes	Yes/No: No	Yes/No: No
How often: Every 2 years §34A-8-3	Take: Yes	Acquisition of habitat: No	Time Limit: N/A
Criteria: Species in danger of extinction throughout all or portion of range; includes federal list §34A-8-1	Transport: Yes		
Subspecies: No	Sale: Yes		
Candidate species: No; but "species of management concern" for species requiring both protection and control §§34A-8A-1 to -9	Possess: Yes		
Emergency Listing: No			
CONSULTATION	LANDOWNER INCENTIVES	PERMITS §§34A-8-8, -10, -11	PENALTIES
Yes/No: No	Yes/No: No	Scientific: Yes Educational: Yes Propagation: Yes Zoological: Yes Other: Yes; damage to property or to protect human health	Class 2 misdemeanor §34A-8-9
What entities: N/A	Type: N/A	Incidental Take: No	
PLANTS	UNIQUE		

	PROVISIONS		
Yes/No: Yes; in definition of species §34A-8-1	Legislative approval required for reintroduction of species currently extinct in state and on federal list §34A-8-13		
What provisions: Same as above	Must notify Governor of adjoining states before listing §34A-8-5		

Tennessee			
"TENNESSEE NONGAME & ENDANGERED OR THREATENED WILDLIFE SPECIES CONSERVATION ACT OF 1974" Tenn. Code Ann. §§70-8-101 to -112 (originally enacted 1974) (animals)			
LISTING	PROHIBITIONS §70-8-104	CRITICAL HABITAT	RECOVERY PLANS
Who does it: Wildlife Resources Commission §70-8-105	Import/export: Yes (export only)	Yes/No: No	Yes/No: No
How often: Every 2 years §70-8-105	Take: Yes; "harass, hunt, capture, kill" §70-8-103	Acquisition of habitat: Yes §70-8-106	Time Limit: N/A
Criteria: Indigenous wildlife whose prospects of survival within state are in jeopardy; includes federal list §70-8-103	Transport: Yes		
Subspecies: Yes §70-8-103	Sale: Yes		
Candidate Species: Yes; "wildlife in need of management" §70-8-103; also protections for species that "closely resemble" §70-8-112	Possess: Yes		
Emergency Listing: No			

CONSULTATION	LANDOWNER INCENTIVES	PERMITS §70-8-106	PENALTIES §70-8-108
Yes/No: No; but cooperative agreements authorized §70-8-111	Yes/No: No	Scientific: Yes Educational: Yes Propagation: Yes Zoological: Yes Other: Yes; "other purposes" and no permit needed if immediate threat to human life	Class A or B misdemeanor; seizure & forfeiture
What entities: N/A	Type: N/A	Incidental Take: No	
PLANTS	UNIQUE PROVISIONS		
Yes/No: Yes; see separate plants summary	Fund for donations §70-8-110		
What provisions: N/A	Black vultures excepted from protection §70-8-108		

Tennessee - Plants			
"RARE PLANT PROTECTION & CONSERVATION ACT OF 1985" Tenn. Code Ann. §§70-8-301 to -314 (originally enacted 1985) (plants)			
LISTING	PROHIBITIONS §70-8-309	CRITICAL HABITAT	RECOVERY PLANS
Who does it: Commissioner of Environment & Conservation; Commissioner of Agriculture must concur §70-8-305	Import/export: No	Yes/No: No	Yes/No: No

How often: N/A	Take: Yes; " knowingly uproot, dig, take, remove, damage, destroy, possess or disturb" unless a landowner or public lands manager, or with written permission from either	Acquisition of habitat: Yes §70-8-106	Time Limit: N/A
Criteria: Species whose continued existence in state is in jeopardy; plus federal list §70-8-303	Transport: No		
Subspecies: Yes §70-8-303	Sale: No		
Candidate Species: Yes; species of special concern §70-8-303	Possess: No		
Emergency Listing: No			
CONSULTATION	LANDOWNER INCENTIVES	PERMITS	PENALTIES
Yes/No: No; but Department can comment on public works projects and encourage voluntary protection efforts § 70-8-308		Scientific: No Educational: No Propagation: No Other: Yes; license allowed for nursery farmers §70-8-306	Up to \$1,000 and/or 6 months jail; plus fines of at least \$100 for first conviction and \$500 for subsequent convictions §70-3-310
What entities: N/A	Type: N/A	Incidental Take: No	
	UNIQUE PROVISIONS		
	No rule shall cause undue interference with normal agriculture & forestry practices §70-8-314		

Texas

Tex. Parks and Wildlife Code Ann. §§68.001 to .021 (originally enacted 1975) (animals)

LISTING	PROHIBITIONS §68.015	CRITICAL HABITAT	RECOVERY PLANS
Who does it: Director of Parks & Wildlife Department §68.003	Import/export: No	Yes/No: No	Yes/No: No
How often: No time limit, but three or more people may petition the department to add or delete species from the statewide extinction list §68.005	Take: Yes; "capture, trap, take, or kill"	Acquisition of habitat: Yes §68.001	Time Limit: N/A
Criteria: Fish or wildlife indigenous to Texas threatened with statewide extinction; plus federal list §68.002	Transport: Yes; "distribute"		
Subspecies: No	Sale: Yes		
Candidate Species: No	Possess: Yes		
Emergency Listing: No			
CONSULTATION			
CONSULTATION	LANDOWNER INCENTIVES	PERMITS §§68.006-.013	PENALTIES
Yes/No: No; but see §83.006; allows Dept., cities and counties to require consultation as part of a regional HCP under federal act	Yes/No: No	Scientific: Yes Educational: Yes Propagation: Yes; for commercial purposes Zoological: Yes Other: No	Seizure & forfeiture §68.017; Class A, B, or C Parks & Wildlife Code misdemeanor §68.021

What entities: N/A	Type: N/A	Incidental Take: No	
PLANTS	UNIQUE PROVISIONS		
Yes/No: Yes; see separate plants summary	Chapter doesn't apply to coyotes, cougars, prairie dogs, red foxes §68.020		

Texas - Plants			
Tex. Parks and Wildlife Code Ann. §§88.001 to .012 (originally enacted 1981) (plants)			
LISTING	PROHIBITIONS §§88.008, .081	CRITICAL HABITAT	RECOVERY PLANS
Who does it: Director of Parks & Wildlife Department §88.003	Import/export: No	Yes/No: No	Yes/No: No
How often: N/A	Take: Yes; for commercial sale; restrictions on public land only; take from private lands requires landowner permission and permit	Acquisition of habitat: Yes §68.001	Time Limit: N/A
Criteria: Plant in danger of extinction through all or portion of its range §88.001; includes federal list §88.002	Transport: Yes		
Subspecies: No	Sale: Yes		
Candidate Species: No; but "protected" plants §88.002	Possess: No		
Emergency Listing: No			

CONSULTATION	LANDOWNER INCENTIVES	PERMITS §88.005	PENALTIES
Yes/No: No	Yes/No: No	Scientific: Yes Educational: Yes Propagation: Yes; for commercial purposes Other: Yes; "take" permit on private lands §88.0081	Class A, B, or C Parks & Wildlife Code violation §88.011
What entities: N/A	Type: N/A	Incidental Take: No; permit not required, but statute doesn't apply if take is incidental to private property or agriculture §88.081	
	UNIQUE PROVISIONS		
	State or local agency that violates statute is subject to civil suit for injunctive relief §88.012		

Utah			
Utah has penalty provisions for destruction of listed species, but otherwise abides by the federal ESA and relies on its nongame wildlife programs to protect species.			
LISTING	PROHIBITIONS	CRITICAL HABITAT	RECOVERY PLANS
Who does it: No listing procedure	Import/export: No	Yes/No: No	Yes/No: No
How often: No time limit	Take: No	Acquisition of habitat: No	Time Limit: N/A
Criteria: No criteria	Transport: No		

Subspecies: No	Sale: No		
Candidate Species: No	Possess: No		
Emergency Listing: No			
CONSULTATION	LANDOWNER INCENTIVES	PERMITS	PENALTIES
Yes/No: No	Yes/No: No	Scientific: No Educational: No Propagation: No Zoological: No Other: No	Misdemeanor, felony, and restitution for taking, destruction, wanton destruction or waste of protected wildlife §§23-20-3 - 8
What entities: N/A	Type: N/A	Incidental Take: No	
PLANTS	UNIQUE PROVISIONS		
Yes/No: No, but the Division can protect federally listed plant species on state lands §65A-2-3	- State prohibits take of "protected" wildlife such as bald and golden eagles §§23-20-3 to -8	- Species Protection Account for status assessments and protection measures §79-2-303	
What provisions: N/A	- "Sensitive" species can be transplanted if part of recovery plan for federally listed species §23-14-21		

VERMONT

Vt. Stat. Ann. 10 §§5401-1 to 5410 (originally enacted 1981)

LISTING	PROHIBITIONS §5403	CRITICAL HABITAT	RECOVERY PLANS
Who does it: Secretary of Natural Resources §5402	Import/export: No	Yes/No: Yes; "may" be designated §5402a	Yes/No: No
How often: No time limit	Take: Yes; includes pursue, shoot, hunt, kill, capture, trap, harm, snare, or net; or an act that creates a risk of injury, including harassment	Acquisition of habitat: Yes §5405	Time Limit: N/A
Criteria: Species that normally occurs in the state and whose existence is in jeopardy; includes federal list §5402	Transport: Yes		
Subspecies: Yes §5401	Sale: No		
Candidate Species: No	Possess: Yes		
Emergency Listing: No			
CONSULTATION	LANDOWNER INCENTIVES	PERMITS §5408	PENALTIES
Yes/No: Yes, state agencies must consult, and must not jeopardize species or critical habitat §5406	Yes/No: No	Scientific: Yes Educational: Yes Propagation: Yes Zoological: Yes Other: Yes; for special purposes consistent with federal ESA, noncommercial cultural or ceremonial purposes	Fines and restitution §5403

What entities: N/A	Type: N/A	Incidental Take: Yes	Seizure §5407
PLANTS	UNIQUE PROVISIONS		
Yes/No: Yes; in definition of species §5401	-No rule shall cause undue interference with normal agricultural or silvicultural processes §5408 -Location of endangered species sites is confidential §5410		
What provisions: Same as above; take definition is uproot, transplant, cut, injure, or kill			

Virginia			
Va. Code §§29.1-563 to -570 (originally enacted 1972) (animals)			
LISTING	PROHIBITIONS §29.1-564	CRITICAL HABITAT	RECOVERY PLANS
Who does it: Endangered Species Board w/ recommendation from Director of Dept. of Conservation and Recreation §29.1-566	Import/export: No	Yes/No: No	Yes/No: No
How often: No time limit	Take: Yes	Acquisition of habitat: No	Time Limit: N/A
Criteria: Species in danger of extinction throughout all or significant portion of range; includes federal list §§29.1-563, -566	Transport: Yes		

Subspecies: No	Sale: Yes		
Candidate Species: No	Possess: Yes		
Emergency Listing: No			
CONSULTATION	LANDOWNER INCENTIVES	PERMITS §29.1-568	PENALTIES §29.1-567
Yes/No: No; but state agencies must "cooperate" to carry out purposes of statute §29.1-570	Yes/No: No	Scientific: Yes Educational: Yes Propagation: Yes Zoological: Yes Other: No	Seizure & forfeiture Class 1 misdemeanor
What entities: N/A	Type: N/A	Incidental Take: Yes	
PLANTS	UNIQUE PROVISIONS		
Yes/No: Yes; see separate plants summary	Prohibits keeping of reptiles in manner that would permit escape §29.1-569		

Virginia - Plants			
"ENDANGERED PLANT & INSECT SPECIES ACT" Va. Code §§3.2-1000 to -1011 (originally enacted 1979) (plants)			
LISTING	PROHIBITIONS §3.2-1003	CRITICAL HABITAT	RECOVERY PLANS
Who does it: Endangered Species Board w/recommendation from Director of Dept. of Conservation and Recreation §3.2-1002	Import/export: No	Yes/No: No	Yes/No: No

How often: N/A	Take: Yes; "collect, pick, cut, dig up for resale" unless by private landowner §3.2-1000	Acquisition of habitat: No	Time Limit: N/A
Criteria: Plant or insect in danger of extinction throughout all or part of its range unless Board determines listing "not to be in the best interest of the welfare of man." §3.2-1000	Transport: Yes		
Subspecies: No	Sale: Yes		
Candidate Species: Yes §3.2-1000	Possess: No		
Emergency Listing: No			
CONSULTATION	LANDOWNER INCENTIVES	PERMITS §3.2-1004	PENALTIES
Yes/No: No	Yes/No: No	Scientific: Yes Educational: Yes Propagation: Yes Zoological: No Other: Biological; or allowed for controlled take of threatened species if "abundant"	Class 1 misdemeanor §3.2-1011
What entities: N/A	Type: N/A	Incidental Take: No	
	UNIQUE PROVISIONS		
	Declares wild ginseng, Virginia birch as threatened §§3.2-1007, -1009		

Washington

Wash. Rev. Code Ann. §§77.12.020 (originally enacted 1987)

LISTING	PROHIBITIONS	CRITICAL HABITAT	RECOVERY PLANS
Who does it: State Fish & Wildlife Commission upon request by Director of Fish & Wildlife Dept §77.12.020	Import/export: Yes	Yes/No: No	Yes/No: No
How often: No time limit			
Criteria: Seriously threatened with extinction in state §77.12.020	Take: Yes; hunt, fish, maliciously harass, or kill §77.15.120	Acquisition of habitat: No; but can exchange surplus property to maintain habitat for endangered species §79.17.040	Time Limit: N/A
Subspecies: No	Transport: Yes		
Candidate Species: No	Sale: Yes		
Emergency Listing: No	Possess: Yes		
CONSULTATION	LANDOWNER INCENTIVES	PERMITS	PENALTIES
Yes/No: No	Yes/No: No	Scientific: No Educational: No Propagation: No Zoological: No Other: Yes; as authorized by Commissioner	First or second degree offense, plus license suspension or revocation §77.15.120
What entities: N/A	Type: N/A	Incidental Take: No	
PLANTS	UNIQUE PROVISIONS		
Yes/No: No			
What provisions: N/A			

West Virginia

West Virginia abides by the federal ESA and relies on its nongame wildlife programs, but does not have a separate program for threatened and endangered species.

LISTING	PROHIBITIONS	CRITICAL HABITAT	RECOVERY PLANS
Who does it: N/A	Import/export: N/A	Yes/No: N/A	Yes/No: N/A
Criteria: N/A	Take: N/A	Acquisition of habitat: N/A	Time Limit: N/A
Subspecies: N/A	Transport N/A		
Candidate Species: N/A	Sale: N/A		
Emergency Listing: N/A	Possess: N/A		
CONSULTATION	LANDOWNER INCENTIVES	PERMITS	PENALTIES
Yes/No: N/A		Scientific: N/A Educational: N/A Propagation: N/A Zoological: N/A Other: N/A	
What entities: N/A	Type: N/A	Incidental Take: N/A	
PLANTS	UNIQUE PROVISIONS		
Yes/No: N/A	N/A		
What provisions: N/A			

Wisconsin

Wis. Stat. Ann. §29.604 (originally enacted 1978)

LISTING	PROHIBITIONS §29.604	CRITICAL HABITAT	RECOVERY PLANS
Who does it: Dept. of Natural Resources §29.604	Import/export: No	Yes/No: No	Yes/No: No
How often: No time limit, but the "Department shall periodically review..." §29.604	Take: Yes	Acquisition of habitat: No	Time Limit: N/A
Criteria: Species whose continued existence in state is in jeopardy; includes federal list §29.604	Transport: Yes		
Subspecies: No; but invertebrates are included in definition of species	Sale: Yes		
Candidate Species: No	Possess: Yes		
Emergency Listing: No			
CONSULTATION	LANDOWNER INCENTIVES	PERMITS §29.604	PENALTIES
Yes/No: Yes §29.604	Yes/No: No	Scientific: Yes Educational: Yes Propagation: Yes Zoological: Yes Other: No	-\$500-2,000 fine plus hunting license revocation for violation of prohibition §29.604 -\$2,000-5,000 and/or 9 mo. jail plus hunting license revocation for knowing violation of prohibition §29.604

What entities: State agencies	Type: N/A	Incidental Take: Yes; must submit conservation plan §29.604	-Civil actions authorized §29.977 -Penalty surcharges for endangered species §29.983
PLANTS	UNIQUE PROVISIONS		
Yes/No: Yes; in definition of species §29.604	Statute doesn't apply to zoos §29.604		
What provisions: Take prohibitions limited to public property §29.604; take=cut, root cup, injure or destroy			

Wyoming

Wyoming abides by the federal ESA and relies on its nongame wildlife programs, but does not have a separate program for threatened and endangered species.

LISTING	PROHIBITIONS	CRITICAL HABITAT	RECOVERY PLANS
Who does it: N/A	Import/export: N/A	Yes/No: N/A	Yes/No: N/A
Criteria: N/A	Take: N/A	Acquisition of habitat: N/A	Time Limit: N/A
Subspecies: N/A	Transport: N/A		
Candidate Species: N/A	Sale: N/A		
Emergency Listing: N/A	Possess: N/A		
CONSULTATION	LANDOWNER INCENTIVES	PERMITS	PENALTIES
Yes/No: N/A		Scientific: N/A Educational: N/A Propagation: N/A Zoological: N/A	N/A

		Other: N/A	
What entities: N/A	Type: N/A	Incidental Take: N/A	
PLANTS	UNIQUE PROVISIONS		
Yes/No: N/A	Take of eagle is prohibited §23-3-101		
What provisions: N/A			

Appendix C: State Statute Examples

LISTING

How, What, and When

Kan. Stat. Ann. §32-960. Same; threatened or endangered species

(a) The secretary shall determine whether any species of wildlife indigenous to the state is a threatened species or an endangered species in this state because of any of the following factors:

- (1) The present or threatened destruction, modification or curtailment of its habitat or range;
- (2) the overutilization of such species for commercial, sporting, scientific, educational or other purposes;
- (3) disease or predation;
- (4) the inadequacy of existing regulatory mechanisms; or
- (5) the presence of other natural or man-made factors affecting its continued existence within this state.

(b) (1) The secretary shall make the determinations required by subsection (a) on the basis of the best scientific, commercial and other data available to the secretary and after consultation, as appropriate, with federal agencies, other interested state agencies and interested persons and organizations...

Mass. Gen. Law Ann. 131A §1. Definitions

The following words shall have the following meanings unless the context clearly requires otherwise:--

"Endangered species", any species of plant or animal in danger of extinction throughout all or a significant portion of its range including, but not limited to, species listed from time to time as "endangered" under the provisions of the Federal Endangered Species Act of 1973, as amended, and species of plants or animals in danger of extirpation, as documented by biological research and inventory...

Miss. Code Ann. §49-5-109. Protection of endangered species

(b) The commission shall conduct a review of the state list of endangered species within not more than two (2) years from its effective date and every two (2) years thereafter and may amend the list by such additions or deletions as are deemed appropriate. The commission shall submit to the governor a summary report of the data used in support of all amendments to the state list during the preceding biennium...

Definition of Species

Wis. Stat. Ann. §29.604. Endangered and threatened species protected

(2) Definitions. For purposes of this section:

(a) “Endangered species” means any species whose continued existence as a viable component of this state's wild animals or wild plants is determined by the department to be in jeopardy on the basis of scientific evidence...

(b) “Threatened species” means any species of wild animals or wild plants which appears likely, within the foreseeable future, on the basis of scientific evidence to become endangered...

(c) Notwithstanding s. 29.001 (90), “wild animal” means any mammal, fish, wild bird, amphibian, reptile, mollusk, crustacean, or arthropod, or any part, products, egg or offspring thereof, or the dead body or parts thereof.

(d) “Wild plant” means any undomesticated species of the plant kingdom occurring in a natural ecosystem...

TAKE PROHIBITIONS

Mass. Gen. Law Ann. 131A §2. Possession; alteration of habitat; exempt artifacts

Except as otherwise provided in this chapter, no person may take, possess, transport, export, process, sell or offer for sale, buy or offer to buy, nor shall a common or contract carrier knowingly transport or receive for shipment, any plant or animal species listed as endangered, threatened or of special concern or listed under the Federal Endangered Species Act.

Except as otherwise provided in this chapter, no person may alter significant habitat.

Possession, transfer, sale or exchange of scrimshaw, curios, collectibles, antiques or artifacts of endangered species, mounted or unmounted, which items can be reasonably determined to pre-date January first, nineteen hundred and seventy-three, shall be exempt from the provisions of this chapter.

Ill. Ann. Stat. 520 §10/3. Possession, transportation, sale or disposition of animal or animal product unlawful

§ 3. It is unlawful for any person:

(1) to possess, take, transport, sell, offer for sale, give or otherwise dispose of any animal or the product thereof of any animal species which occurs on the Illinois List, unless otherwise authorized by law;

(2) to deliver, receive, carry, transport or ship in interstate or foreign commerce plants listed as endangered by the federal government without a permit therefor issued by the Department as provided in Section 4 of this Act;

- (3) to take plants on the Illinois List without the express written permission of the landowner; or
- (4) to sell or offer for sale plants or plant products of endangered species on the Illinois List.

PENALTIES

P.R. Code 12 §107t, Penalties

...any violations to the regulations on vulnerable or endangered species shall be deemed to be felonies and shall be punished with a fine of not less than five thousand dollars (\$5,000) nor of more than fifty thousand dollars (\$50,000), or with a term of imprisonment of not less than ninety (90) days nor of more than three (3) years, or with both penalties at the discretion of the court.

CONSULTATION

Wis. Stat. Ann. §29.604. Endangered and threatened species protected

(6r) Agency activities.

(a) A state agency shall notify the department at the earliest opportunity of the location, nature and extent of a proposed activity that the state agency may conduct, approve or fund and that may affect an endangered species or threatened species. The department may allow the taking of an endangered species or threatened species if all of the following apply:

1. The activity is accomplished in accordance with interagency consultation procedures established by the department and the state agency for the purpose of minimizing any adverse effect on the endangered species or threatened species.
2. The activity is not likely to jeopardize the continued existence and recovery of the endangered species or threatened species, or the whole plant-animal community of which it is a part, within this state and the activity is not likely to result in the destruction or adverse modification of a habitat that is critical to the continued existence of the endangered species or the threatened species within the state, as determined by the department under par. (b).
3. The benefit to public health, safety or welfare justifies the activity....

ME. Rev. Stat. 12 §12806. State and local cooperation

1. Review. A state agency or municipal government may not permit, license, fund or carry out projects that will:

A. Significantly alter the habitat identified under section 12804 subsection 2 of any species designated as threatened or endangered under this subchapter; or

B. Violate protection guidelines set forth in section 12804, subsection 3.

The commissioner shall make information under section 12804 available to all other state agencies and municipal governments for the purposes of review.

2. Variance. Notwithstanding subsection 1, state agencies and municipal governments may grant a variance from this section provided that:

A. The commissioner certifies that the proposed action would not pose a significant risk to any population of endangered or threatened species within the State; and

B. A public hearing is held on the proposed action...

CRITICAL HABITAT AND HABITAT ACQUISITION

Critical Habitat

Conn. Gen. Stat. Ann. §26-306. Regulations. Determination of whether any native species is endangered, threatened or of special concern. List. Essential habitats identified

(b) ...Not later than June 22, 1991, the commissioner shall so adopt regulations to identify, where biologically feasible, essential habitats for endangered and threatened species...

Habitat Acquisition

12 ME. Rev. Stat. Ann. §12804. Conservation of endangered species

1. Conservation of nongame and endangered species. The commissioner may establish such programs as are necessary to bring any endangered or threatened species to the point where it is no longer endangered or threatened, including:

A. Acquisition of land or aquatic habitat or interests in land or aquatic habitat;...

Kan. Stat. Ann. §32-962. Same; programs for conservation.

(a) The secretary shall establish such programs, including acquisition of land or aquatic habitat, as are deemed necessary for the conservation of nongame, threatened and endangered species. The secretary shall utilize all authority vested in the secretary by the laws of this state to carry out the purposes of this section with the exception that the secretary shall not utilize the power of eminent domain to carry out such programs unless a specific authorization and appropriation is made therefor by the legislature...

RECOVERY PLANNING

N.C. Gen. Stat. §113-333. Powers and duties of the Commission

(b) The Wildlife Resources Commission shall, as expeditiously as possible, develop a conservation plan for the recovery of protected wild animal species. In developing a conservation plan for a protected wild animal species, the Wildlife Resources Commission shall consider the range of conservation, protection, and management measures that may be applied to benefit the species and its habitat. The conservation plan shall include a comprehensive analysis of all factors that have been identified as causing the decline of the protected wild animal species and all measures that could be taken to restore the species. The Wildlife Resources Commission shall publish draft species conservation plans on its Web site and shall consider public comment in developing and updating species conservation plans...

N.M. Stat. Ann. §17-2-40.1 Recovery plans; procedures.

A. To the extent practicable, a recovery plan shall be developed pursuant to Subsections B through G of this section for any species listed as threatened or endangered. If indicated, the director shall conduct a social and economic analysis and, if adverse impacts are found, develop a social or economic mitigation plan.

B. To the extent practicable, the director shall develop recovery plans that include several threatened or endangered species that utilize similar habitats or share a common threat or both. A multiple-species recovery plan shall be designed to accomplish recovery of the shared habitat or reduce a common threat or both...

PERMITS

Cal. Fish and Game Code §2081. Authorization of acts prohibited by § 2080; taking of endangered, threatened, and candidate species; permits; regulations

The department may authorize acts that are otherwise prohibited pursuant to Section 2080, as follows:

(a) Through permits or memorandums of understanding, the department may authorize individuals, public agencies, universities, zoological gardens, and scientific or educational institutions, to import, export, take, or possess any endangered species, threatened species, or candidate species for scientific, educational, or management purposes.

PRIVATE LANDOWNER INCENTIVES

Haw. Rev. Stat. Ann. §195D-23. Incentives

(a) After approval of a habitat conservation plan or safe harbor agreement, or issuance of an incidental take license pursuant to this chapter, no agencies or departments of the State, in order to protect a threatened or endangered species, may impose any new requirements or conditions on, or modify any existing requirements or conditions applicable to, a landowner or successor to the landowner, to mitigate or compensate for changes in the conditions or circumstances of any species or ecosystem, natural community, or habitat covered by the plan, agreement, or license unless:

(1) The landowner, or the landowner's successor, expressly consents to the requirement, condition, or modification;

(2) The board has found, in accordance with those special procedures agreed to by the board and the landowner, or in the absence of any special procedures, in accordance with those procedures that govern the findings generally, that:

(A) The requirement, condition, or modification does not impose any additional restriction on any parcel of land or body of water available for use or development under the plan or agreement; and

(B) The requirement, condition, or modification will not increase the cost to the landowner or other parties to the plan or agreement of implementing the plan or agreement;...

Kan. Stat. Ann. §32-962. Same; programs for conservation

(b) (1) In carrying out programs authorized by this section, the secretary may enter into agreements with federal agencies, other states, other state agencies, political subdivisions of this state or private persons for administration and management of any area established under this section or utilized for conservation of nongame species, species in need of conservation or threatened or endangered species. Such programs shall include, but not be limited to, the following conservation agreements:

(A) Prelisting conservation agreement: An agreement identifying land where the contracting entity agrees to carry out management activities that increase the likelihood of species survival before a species is listed as threatened or endangered. The intent of such agreement would be to allow the contracting entity to carry out management activities specified in the agreement during the life of the agreement without penalties of law enforcement action or permitting requirements if the species is listed at a later date.

(B) Safe harbor agreement: An agreement in which the contracting entity agrees to maintain or enhance suitable, but currently unoccupied, habitat for a species listed as in need of conservation, threatened or endangered so as to increase utilization of the habitat by a listed species. The intent of such agreement would be to protect the contracting entity from any restrictions on land use that might otherwise occur if a listed species immigrates into the habitat.

(C) No take agreement: An agreement allowing the contracting entity to implement voluntary management activities that maintain, enhance, set aside or create habitat for species listed as in need of conservation, threatened or endangered. The intent of such agreement would be to provide assurance that the management activities specified in the agreement would not lead to penalties of law enforcement action or permitting requirements if future changes in land use are needed.

(2) The initial term of any agreement pursuant to subsection (b)(1) shall be five years. An agreement may be continued, with or without modification, after the five-year term, subject to review and determination by all parties. In the absence of a mutually satisfactory determination by the parties that an agreement should continue, the agreement will terminate...

S.C. Code Ann. §50-15-50. Criteria of designating land as certified management area for endangered species; review and revision.

(A) The department shall promulgate regulations addressing criteria for designating land as certified management area for endangered species or of species in need of management in order to qualify a taxpayer for the income tax credit provided for in Section 12-6-3520.

(B) Every five years the department may review the population status of species subject to certified management agreements and shall revise the regulations accordingly. The department may revise criteria at that time as necessary for lands to retain their designation as certified management areas.

Appendix D: Model Law (1998)

Model Law from “State Endangered Species Acts: Past, Present, and Future” (1998)

Section 1. Legislative findings and policy

- A. The Legislature hereby finds all of the following:
 - (1) Certain species of animals and plants have been rendered extinct as a consequence of human activities.
 - (2) Other species of animals and plants are in danger of extinction because their habitats are being destroyed or adversely modified, or because of over-exploitation, disease, predation, invasions of non-native species, pollution or other factors.
 - (3) Wild species of animals and plants are of ecological, educational, historical, recreational, aesthetic, economic, moral, ethical and scientific value to the people of this state, and the conservation of these species, their habitats, and ecosystems is in the public interest.
- B. The Legislature declares that it is the policy of the state to ensure the protection of our state’s declining species, their habitats, and ecosystems, to reaffirm and strengthen this state’s commitment to preserve them, and to safeguard our children’s and future generations’ economic and ecological future.

Section 2. Definitions

As used in this Act (sections 1 to 17):

- A. “Animal” means any member of the animal kingdom including, but not limited to, any mammal, bird, reptile, amphibian, fish, mollusk, crustacean, arthropod or other invertebrate or any part, product, egg or offspring or the dead body or any part thereof.
- B. “Conservation” means the restoration and maintenance of a species in the wild, and its habitat, so that the measures provided by this Act are not necessary.
- C. “Critical habitat” means specific areas of the state on which are found the physical or biological features essential to the recovery of threatened or endangered species.
- D. “Cumulative impacts” means those direct and indirect impacts on a species or its habitat that result from the proposed action and other past, present, and reasonably foreseeable future actions.
- E. “Department” means the department of_____.
- F. “Director” means the director of the department of_____.
- G. “Ecosystem” means a dynamic complex of plant and animal communities and their associated nonliving environment interacting as an ecological unit.
- H. “Endangered species” means any species of animal or plant in danger of extinction throughout all or a significant part of its range in the state. The term may also include any species of animal or plant appearing on the United States list of endangered species as set forth by the federal Endangered Species Act of 1973, and contained in 50 C.F.R secs. 17.11-12, which presently exists or historically resided in this state. The term shall not include any species of the class insecta

determined by the director to constitute a pest whose protection under the Act would present a significant health or safety risk to humans.

- I. "Harass" in the definition of "take" in the Act means an intentional or negligent act or omission which creates the likelihood of injury to a species by annoying it to such an extent as to significantly disrupt normal behavioral patterns which include, but are not limited to, breeding, feeding, or sheltering.
- J. "Harm" in the definition of "take" in the Act means an act which is likely to kill or injure a species. Such act may include significant habitat modification or degradation where it may significantly impair essential behavioral patterns, including feeding, breeding, or sheltering.
- K. "Jeopardize" means to engage in an action that reasonably would be expected, directly, indirectly or cumulatively, to reduce the likelihood of recovery in the wild of any listed species.
- L. "Person" means an individual, corporation, partnership, trust, association or other private entity or any officer, employee, agent, department or instrumentality of the federal government or of a state, municipality, or political subdivision of a state.
- M. "Plant" means a member of the plant kingdom including seeds, roots or other parts.
- N. "Private applicant" means any non-governmental person who has applied for an incidental take permit under section 10 of this Act.
- O. "Reasonable and prudent alternatives" means alternative actions identified during consultation that can be implemented in a manner consistent with the intended purpose of the action, that are legal, economically and technologically feasible, and that the department believes would avoid the likelihood of jeopardizing the recovery of the species or result in the destruction or adverse modification of survival habitat or critical habitat.
- P. "Recovery" means the restoration and maintenance of a threatened or endangered species in the wild, and its habitat, so that the measures provided by this Act are no longer necessary.
- Q. "Species" means and shall include any subspecies of animals or plants and any distinct population segment of a species.
- R. "Species of special concern" means any species of animal or plant which appears likely, within the foreseeable future, to become threatened throughout all or part of its range in the state.
- S. "Survival habitat" means the habitat necessary to support the survival of a listed species before critical habitat is finalized.
- T. "Take" means to disturb, harass, harm, pursue, hunt, shoot, would, kill, trap, capture, or collect, or to attempt to engage in any such conduct.
- U. "Threatened species" means any species of animal or plant which appears likely, within the foreseeable future, to become endangered throughout all or a significant portion of its range in the state. The term may also include any species of animal or plant appearing on the United States list of threatened species as set forth by the federal Endangered Species Act of 1973 and contained in 50 C.F.R. secs. 17.11-12, which presently exists or historically resided in this state. The term shall not include any species of the class insecta determined by the director to constitute a pest whose protection under the Act would present a significant health or safety risk to humans.

Section 3. Listing procedure

- A. The department shall establish and maintain a list of endangered species, a list of threatened species, and a list of species of special concern.
- B. The department shall determine whether any species is an endangered species, a threatened species, or a species of special concern based on any of the following factors:
 - (1) the present or threatened destruction, modification, or curtailment of its habitat or range;
 - (2) overutilization for commercial, recreational, scientific, or educational purposes;
 - (3) disease or predation;
 - (4) the inadequacy of existing regulatory mechanisms; or
 - (5) other natural or manmade factors affecting its continued existence.
- C. (1) The department shall adopt guidelines by which an interested person may petition the department to add a species to, remove a species from, or change the status of a species on the list of endangered species, threatened species, or species of special concern.
 - (2) To be accepted, a petition shall, at a minimum, include sufficient scientific information that a petitioned action may be warranted, Petitions should also include, to the maximum extent practicable, information regarding the population trend, range, distribution, abundance, and life history of a species, the factors affecting the ability of the population to survive and reproduce, the degree and immediacy of the threats to the species, the impact of existing management, and any other relevant information or material.
 - (3) The department shall make a final determination on petitions within 90 days of receipt.
- D. The department may, in absence of a petition from an interested party, add a species to, remove a species from, or change the status of a species on the list of endangered species, threatened species, or species of special concern.
- E. The decision by the department to add a species to, remove a species from, or change the status of a species on the list of endangered species, threatened species or species of special concern, shall be subject to public notice and comment.
- F. Notwithstanding any other paragraph in this section, the department may adopt a regulation which adds a species to the list of endangered species, threatened species, or species of special concern:
 - (1) as an emergency regulation if the department finds that there is any emergency posing a significant threat to continued existence of the species; or
 - (2) if such species so closely resembles a listed species that enforcement personnel would have substantial difficulty in attempting to differentiate between the listed and unlisted species, the effect of this substantial difficulty is an additional threat to a listed species, and such treatment of an unlisted species will substantially facilitate the enforcement and further the policy of this Act.

Section 4. Habitat protection

- A. (1) The department shall, concurrently with any endangered or threatened listing decision pursuant to this Act, designate survival habitat for any species for which critical habitat has not been designated under the federal Endangered Species Act.

- (2) The department shall designate survival habitat of species based on the best scientific information available.
- B. (1) The department shall, concurrently with the adoption of the final recovery plan for a species, designate critical habitat for any species for which critical habitat has not been designated under the federal Endangered Species Act.
- (2) The department shall designate critical habitat on the basis of the best scientific information available, after taking into consideration the economic impact, and any other relevant impacts, of specifying any particular area as critical habitat. The department may exclude any area from critical habitat if it determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless the failure to designate such area as critical habitat will impair the species' recovery.
- C. Proposed designation of our changes to survival habitat or critical habitat for a species shall be subject to public notice and comment.

Section 5. Prevention strategies

- A. Ecosystem protection
 - (1) The department may establish such programs, including those for scientific research and the acquisition of habitat, as deemed necessary to protect and conserve the natural diversity of species and the ecosystems upon which they depend, including those species listed as endangered, threatened or species of special concern pursuant to this Act.
 - (2) Through these programs the department may:
 - (a) identify those ecosystems that are most impaired or imperiled, and develop measures, including habitat acquisition, to protect them;
 - (b) identify key species within each identified ecosystem, and develop measures, including habitat acquisition, to conserve these species and their habitats;
 - (c) identify measures that each state agency shall implement to conserve species of special concern or other species;
 - (d) develop economic incentives to conserve species diversity and ecosystems;
 - (e) develop criteria for evaluating the progress of state agencies toward implementing preventative programs; and
 - (f) develop any other program consistent with the conservation goals of this Act and the preventative goal of this section.
- B. Conservation agreements
 - (1) The department is authorized to enter into written species conservation agreements with any person that:
 - (a) promote the recovery of any threatened or endangered species; or
 - (b) promote the conservation of species of special concern or other species not listed as threatened or endangered by this Act.
 - (2) Such agreements shall include:
 - (a) objective and measurable conservation and/or recovery goals;
 - (b) site-specific and other specific management actions necessary for achieving states goals; and

- (c) a monitoring plan and strategy to accommodate changes in circumstances
- (3) The department shall provide for an opportunity for public participation in the development of any conservation agreement under this section.
- C. Consistent with the requirements of this Act, the department may enter into agreements with any person for implementation of conservation programs established under this section.

Section 6. Recovery plans and procedures

- A. (1) The department shall develop a plan for each threatened and endangered species listed pursuant to this Act, for which a final recovery plan has not been promulgated under the federal Endangered Species Act, to achieve the recovery of the species.
- (2) The department shall, within 18 months after the date of listing a species as threatened or endangered, develop a draft recover plan, which shall be made available for public notice and comment, and within 30 months after listing, promulgate and implement a final recovery plan for the recover of each endangered species and threatened species listed pursuant to this Act.
- B. To the extent scientifically practicable and advisable, the department may develop recovery plans that include several threatened or endangered species that utilize similar habitats or share a common threat or both. A multiple-species recovery plan shall address the recovery of each listed species as required by this section.
- C. The department shall incorporate in each plan:
 - (1) a description of site-specific management actions, noting those of the highest priority and greatest recovery potential, as may be necessary to achieve the plan's goal for the recovery of the species;
 - (2) objective and measurable criteria, including habitat needs and population levels, which when met would result in a determination, consistent with this Act, that the species be removed from the list of threatened or endangered species;
 - (3) estimates of the time and cost required to carry out measures needed to achieve the plan's recovery goal, including intermediate goals, as well as description of government expenditures that hinder species recovery;
 - (4) a general description of types of actions likely to violate the take prohibition of section 9 or the jeopardy prohibition of section 7; and
 - (5) a list of persons potentially affected by the goals or management actions set forth in the recovery plan
- D. The director shall report every __ years to the legislature on the status of efforts to develop and implement recovery plans for all threatened and endangered species and on the status of all species for which such plans have been developed.

Section 7. Consultation

- A. Each state agency shall consult with the department, in accordance with guidelines developed by the department after public notice and comment, on any action funded, permitted, licensed, carried out, or in any way authorized by the state agency that may adversely affect the recovery

of any threatened species or endangered species. Each state agency shall ensure that its actions are not likely to jeopardize the recovery of any endangered or threatened species or adversely modify or destroy the survival habitat or critical habitat of any threatened or endangered species.

- B. Whenever a state agency consults with the department, the department shall issue a written determination on whether a proposed action is likely to jeopardize the recovery of any endangered species or threatened species or adversely modify or destroy survival habitat or critical habitat. The department shall base all determinations on the best scientific information available.
- C. If the state agency action is likely to jeopardize the recovery of any endangered or threatened species or adversely modify or destroy the survival habitat or critical habitat of any threatened or endangered species, the department shall recommend reasonable and prudent alternatives which would not jeopardize the recovery of any endangered or threatened species or adversely modify or destroy the survival habitat or critical habitat of any threatened or endangered species.
- D. If the state agency action is likely to impair the conservation of any species of special concern, the department shall, to the maximum extent practicable, recommend alternatives which would not impair the conservation of such species.
- E. Notwithstanding the prohibition against take contained in section 9 of this Act, the department may permit any state agency to take an endangered species or threatened species in accordance with the requirements of section 10 of this Act.
- F. The department shall, to the maximum extent practicable, adopt regulations providing for public notice and comment on all consultations conducted pursuant to this section.
- G. After initiation of consultation, the state agency, as well as any permit or license applicant, shall not make any irreversible or irretrievable commitment of resources with respect to the agency action which has the effect of foreclosing the formulation or implementation of any reasonable and prudent alternatives or recovery measures.

Section 8. Tax incentives

- A. Property that is subject to an approved conservation agreement as defined in section 5 shall be allowed a deduction or reduction in the amount determined under paragraph B for all state and local real property taxes imposed on such real property for each year in which the conservation agreement remains in effect. The deduction or reduction allowed by this section shall be in addition to any other deduction or reduction allowed by law.
- B. The deduction or reduction allowed by this section shall equal ___% of the amount of state and local real property taxes imposed by law.
- C. The department is authorized to identify and recommend to the Legislature any other tax or other incentives designed to conserve or recover species and their habitats pursuant to this Act.

Section 9. Prohibitions and exceptions

- A. No person shall import into this state, export out of this state, take, possess, purchase, or sell any species, or any part or product thereof, that the department determines to be an endangered species or a threatened species, or attempt any of those acts, except as otherwise provided in this Act.
- B. Through permits, the department may authorize individuals, public agencies, universities, zoological gardens, and scientific or educational institutions, to import, export, take or possess any endangered species or threatened species for scientific, zoological, or educational purposes, or for propagation in captivity of such plant or animal.
- C. The department may also issue permits authorizing a person to take any endangered species or threatened species to protect human health; provided that endangered species may be removed, captured or destroyed without permit by any person in emergency situations involving an immediate threat to human life.
- D. This section does not prohibit the sale of any endangered species or threatened species, or any part or product thereof, when the owner can demonstrate that the species, or part or product thereof, was in the person's possession before the date upon which either the department listed the species as an endangered species or threatened species or prior to enactment of this law, whichever date is earlier.
- E. The department may issue regulations as it deems necessary to provide management flexibility for threatened species, or provided that such regulations are consistent with the recovery of the threatened species.

Section 10. Incidental take

- A. The department may permit the taking of any endangered species or threatened species if:
 - (1) such taking is incidental to, and not the purpose of, carrying out of an otherwise lawful activity;
 - (2) the taking will not impair the recovery of any endangered species or threatened species; and
 - (3) the applicant develops and implements an approved incidental take plan pursuant to sub-section (B).
- B. An incidental take plan under this section shall specify 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 impacts 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 impacts, and any adaptive management provisions that are necessary to respond to changes in circumstances that are likely to impair the recovery of any endangered or threatened species covered by the plan;
 - (4) procedures for monitoring the effectiveness of the recovery measures in the incidental take plan;

- (5) reasonably anticipated costs of implementing the plan, and the funding that will be available, throughout the term of the plan, to implement the incidental take plan by a non-governmental applicant; and
 - (6) other modifications to the plan or other additional measures, if any, that the department may require under unforeseen circumstances, and such other matters as the department determines to be necessary for the recovery of species consistent with this section.
- C. The department shall adopt regulations providing for public notice and comment on all incidental take plans and accompanying incidental take permits.
- D. The department shall not issue an incidental take permit until the applicant has posted a performance bond or other financial security to ensure adequate funding and implementation for each element of the plan.
- E. The department, not the non-governmental applicant, shall be responsible for recovery measures and costs that are in excess of those identified by the incidental take plan.
- F. (1) The department may enter into “safe harbor” agreements with non-governmental applicants to promote the recovery of endangered species or threatened species by creating, restoring, improving or maintaining habitat for endangered species or threatened species. Under such agreements, the department shall permit the person to take endangered species or threatened species if the taking is incidental to, and not the purpose of the carrying out of an otherwise lawful activity.
(2) For each agreement under this subsection, the department shall establish a baseline requirement that is based upon the best scientific information available obtained from a recent field survey of the property that will, at a minimum, maintain or establish viable conditions for the species covered by the agreement. The baseline shall be expressed in terms of abundance or distribution of endangered or threatened species and quantity or quality of habitat.
(3) The department shall not enter into a safe harbor agreement for a geographic area for which a permit has been issued pursuant to section 10(A).
- G. If any person fails to abide by the terms of the permit authorizing an incidental take of an endangered species or threatened species, the department shall immediately suspend or revoke such permit.

Section 11. Penalties

- A. Criminal Penalties
 - (1) Any person who knowingly violates any provisions of this Act or any regulation promulgated hereunder or who knowingly causes or allows another person to violate any provision of this Act or any regulation promulgated hereunder, is guilty of a class [lowest level] felony and shall be sentenced in accordance with the provisions of [cite criminal code section].
 - (2) Any person who is convicted of a second or subsequent violation of section 11(A)(1) is guilty of a class [higher level] felony and shall be sentenced in accordance with the provisions of [cite criminal code section].
- B. Civil Penalties

In addition to the penalties imposed under paragraph A, the department may assess a civil penalty of up to _____ dollars (\$_____) for each knowing violation of this Act or any regulation promulgated hereunder and up to _____ dollars (\$_____) for any other violation.

C. The commission of a prohibited act under paragraphs A and B with respect to each individual animal or plant shall constitute a separate violation.

D. Damages

Any person who, in violation of this Act, damages any member or habitat of a threatened species or endangered species shall be liable to the state for the costs incurred by the state in restoring or replacing the species or habitat, including reasonable costs of assessing such damage. Such damages shall be in addition to the civil or criminal penalties imposed under this section.

Section 12. Enforcement

A. The director, each conservation officer, and every law enforcement official throughout the state is authorized to enforce the terms of this Act.

B. Any person may bring an action for declaratory and equitable relief and money damages against any other person alleged to have violated or to be in violation of this Act or its regulations.

Section 13. Trust fund

A. There is established within the state treasury a special fund to be known as the Endangered Species Trust Fund. The fund shall be administered by the department, and moneys in the fund shall be used exclusively to implement the purposes of this Act. The fund shall consist of moneys from the following sources:

(1) Moneys accrued from the sale of retail items officially sponsored by the department for the fund;

(2) Private contributions for the conservation and recovery of the state's plants and animals;

(3) Penalties or fines resulting from enforcing violations of this Act;

(4) Proceeds of performance bonds and other deposits of financial security pursuant to section 10(D) of this Act;

(5) Legislative appropriations; and

(6) Any other source of revenue designated for the fund.

B. The fund shall be held separate and apart from all other moneys, funds, and accounts in the state treasury; provided that moneys received as deposits or contributions from private sources shall be deposited and accounted for in accordance with the conditions established by the agencies or persons making the contribution. Earnings on the investment of the assets of the fund shall become a part of the fund. Any balance in the fund at the end of a fiscal year shall be carried forward to the next fiscal year.

Section 14. Regulations

The department shall adopt such regulations as are necessary to carry out the purposes of this Act.

Section 15. Agreements

In carrying out the provisions of this Act, and in order to establish protection efforts across jurisdictions and ecosystems, the department may enter into agreements that are consistent with this Act with federal agencies, other state agencies, political subdivisions of the state or other states.

Section 16. Saving clause

If any provision of this Act is found to be invalid by a court of competent jurisdiction, such invalidity shall not affect the validity of the remaining provisions of this Act.

Section 17. Effective date

This Act shall take effect immediately upon its approval.