

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

FIRST REGULAR SESSION

ONE HUNDRED AND TENTH LEGISLATURE

Legislative Document

No. 1450

S. P. 520

In Senate, March 24, 1981

Referred to the Committee on Fisheries and Wildlife. Sent down for concurrence and ordered printed.

MAY M. ROSS, Secretary of the Senate

Presented by Senator Clark of Cumberland.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED AND EIGHTY-ONE

AN ACT Conserving Nongame and Endangered or Threatened Species.

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

Sec. 1. 12 MRSA § 7751, as enacted by PL 1979, c. 420, § 1, is repealed and the following enacted in its place:

§ 7751. Legislative intent and purpose

The Legislature finds that wildlife species which are endangered, threatened with extinction or not commonly pursued, killed or consumed either for sport or profit have need of special protection and that it is in the public interest to preserve, protect, perpetuate and enhance nongame wildlife resources of this State through preservation of a satisfactory environment and an ecological balance.

Sec. 2. 12 MRSA §§ 7751-A, 7751-B and 7751-C are enacted to read:

§ 7751-A. Short title

This subchapter shall be known and may be cited as the "Nongame and Endangered Species Conservation Act."

§ 7751-B. Definitions

As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings.

1. **Advisory board.** “Advisory board” means the Nongame Threatened and Endangered Species Advisory Board.

2. **Nongame species.** “Nongame species” means any wild animal, bird, amphibian, reptile, fish, mollusk, crustacean or other wild animal not otherwise legally classified by statute or regulation of the State, and any other species of wildlife legally classified as game existing in areas where hunting of that wildlife is prohibited.

3. **Optimum carrying capacity.** “Optimum carrying capacity” means that point at which a given habitat can support healthy populations of wildlife without diminishing the ability of the natural area habitat to continue that function.

4. **Species.** “Species” includes any species or subspecies of wildlife or any other group of wildlife of the same species of smaller taxa in common spacial arrangement that interbreed when mature.

5. **Take.** “Take” means to harrass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect, or to attempt to engage in any such conduct.

6. **Wildlife.** “Wildlife” means any member of any nondomesticated species of the animal kingdom, whether reared in captivity or not, including any mammal, fish, bird, amphibian, reptile, mollusk, crustacean, anthropod or other invertebrate and including any part, product, egg or offspring thereof of the dead body or parts thereof. Wildlife does not include any wildlife exclusively found in coastal waters.

§ 7751-C. Advisory board

1. **Appointed.** There is established an advisory board consisting of 7 members, to be known as the Nongame Threatened and Endangered Species Advisory Board. The members of the advisory board shall be appointed by the commissioner.

2. **Length of term.** Appointments shall be for a term of 3 years, except that of those first appointed, 2 shall be appointed for a term of one year, 2 for a term of 2 years and 3 for a term of 3 years. The members shall serve until their successors are appointed and qualified. Upon the death, resignation or removal from office of any member, the commissioner shall appoint a member to serve for the unexpired term.

3. **Chairman.** The advisory board shall annually at its first meeting elect one of its members to serve as chairman.

4. **Expenses.** The members of the board shall receive \$25 a day for their services and shall be reimbursed for their actual expenses.

Sec. 3. 12 MRSA § 7752, as enacted by PL 1979, c. 420, § 1, is repealed and the following enacted in its place:

§ 7752. Determinations; regulations

1. **Investigation.** The commissioner shall conduct investigations on nongame wildlife in order to develop information relating to population, distribution, habitat needs, limiting factors and other biological and ecological data to determine management measures necessary for the purpose of increasing the numbers of individuals within species and populations of wildlife up to the optimum carrying capacity of their habitat and maintaining such levels.

2. **Regulations.** On the basis of the determinations made pursuant to subsection 1, the commissioner shall issue, in accordance with the Maine Administrative Procedure Act, Title 5, chapter 375, regulations no later than 6 months from the effective date of this chapter and develop management and conservation programs designed to insure the continued ability of nongame wildlife to perpetuate themselves at optimum levels successfully.

These regulations shall set forth a list of nongame wildlife, giving their common and scientific names by species and subspecies.

These regulations shall establish limitations relating to taking, possession, transportation, exportation, processing, sale, offer for sale or shipment as may be necessary to manage such nongame wildlife.

Sec. 4. 12 MRSA § 7752-A is enacted to read:

§ 7752-A. Prohibited acts

Except as otherwise provided in regulations which the commissioner, with the approval of the advisory board, may establish, it is unlawful for any person to take, possess, sell, offer for sale or ship and for any common or contract carrier knowingly to transport or receive for shipment any species or subspecies of wildlife appearing on any of the following lists:

1. **Nongame list.** The list of nongame species listed under section 7751-B, subsection 2;

2. **Threatened or endangered list.** The list of wildlife indigenous to the State determined to be threatened or endangered within the State under section 7753.

Sec. 5. 12 MRSA § 7753, sub-§ 1, first sentence, as enacted by PL 1979, c. 420, § 1, is amended to read:

The commissioner, with the approval of the advisory board, shall designate a species to be endangered or threatened whenever he finds one of the following to exist:

Sec. 6. 12 MRSA § 7754, sub-§ 1, first sentence, as enacted by PL 1979, c. 420, § 1, is amended to read:

The commissioner, subject to the approval of the advisory board, may establish such programs as are necessary for the conservation of nongame species or to bring any endangered or threatened species to the point where it is no longer endangered or threatened, including:

Sec. 7. 12 MRSA § 7755, as enacted by PL 1979, c. 420, § 1, is amended to read:

§ 7755. Cooperative agreements

The commissioner may enter into agreements with federal agencies, other states, political subdivisions of this State or private persons for the establishment and maintenance of programs for the conservation of **nongame**, endangered or threatened species and may receive all federal funds allocated for obligations to the State pursuant to these agreements.

Sec. 8. 12 MRSA § 7756, as enacted by PL 1979, c. 420, § 1, is repealed.

Sec. 9. 12 MRSA §§ 7757 to 7761 are enacted to read:

§ 7757. Permits

1. **Scientific, zoological, educational and other purposes.** The commissioner, with the approval of the advisory board, may permit, under such terms and conditions as may be prescribed by regulation, the taking, possession, transportation, exportation or shipment of species or subspecies of wildlife which appear on the State's list of nongame threatened or endangered species for scientific, zoological or educational purposes, for propagation in captivity of such wildlife or for other special purposes, but only when the taking will clearly benefit the species involved.

2. **Permits for capture, transportation or killing.** Upon good cause shown and where necessary to alleviate serious damage to property, nongame, threatened or endangered species may be captured and transported or killed, but only pursuant to permit issued by the commissioner and, where possible, by or under the supervision of an agent of the department. Such permits may only allow lethal control techniques to be used in cases where all alternative control methods involving such techniques as live trapping, have been carefully attempted and found unworkable and where the species are not endangered.

3. **Removal, capture or destruction without permit.** Nongame, threatened or endangered species may be removed, captured or destroyed without permit by any person in emergency situations involving an immediate threat to human health and safety. Provisions for removal, capture or destruction of nongame, threatened or endangered species for the purposes set out in this subsection shall be set forth in regulations issued by the commissioner, with the approval of the advisory board.

§ 7758. Permit violations

1. **Nongame species.** Any person who violates the terms of a permit issued pursuant to section 7757 or ships any species or subspecies of wildlife which appear on the State's list of nongame species commits a civil violation for which a forfeiture of not less than \$100 nor more than \$500 shall be adjudged.

2. **Threatened species.** Any person who violates the terms of a permit issued pursuant to section 7757 or who, without a permit, takes possession, transports,

exports or ships any species or subspecies of wildlife which appear on the State's list of threatened species is guilty of a Class E crime.

3. **Endangered species.** Any person who violates the terms of a permit issued pursuant to section 7757 or who, without a permit, takes, possesses, transports, exports or ships any species or subspecies of wildlife which appear on the State's list of endangered species is guilty of a Class D crime.

4. **Seizure and disposition of wildlife.** Any wildlife possessed, shipped, transported, sold, offered for sale or delivered in violation of sections 7752, 7752-A, 7753, 7754 or 7757 or any regulation issued under those sections shall be seized and shall be disposed of by the commissioner for the best interest of the species involved.

§ 7759. Application

None of the provisions of sections 7752, 7752-A, 7753, 7754, 7757 or 7758 or any regulation established under those sections may be construed to apply retroactively or to prohibit importation into the State of wildlife which may be lawfully imported into the United States or lawfully taken or removed from another state or to prohibit entry into the State or possession, transportation, exportation, processing, sale, offer for sale or shipment of any wildlife whose species or variety is deemed to be threatened with statewide extinction in the State but not in the state where originally taken if the person engaging therein demonstrates by substantial evidence that the wildlife was lawfully taken or removed from that state. This section may not be construed to permit the possession, collection, transportation, processing, sale, offer for sale or shipment within the State of wildlife on the United States' list of endangered fish and wildlife, United States Endangered Species Act of 1973, section 4, subsection (d), except as permitted in the provision to section 10 of that Act.

§ 7760. Enforcement

Any individual may file suit to enforce this Act.

§ 7761. Nongame, Threatened or Endangered Species Fund

1. **Moneys credited to the fund.** Moneys received by the Treasurer of State pursuant to Title 36, section 5284 shall be credited to a nongame, threatened or endangered species fund.

2. **Expenditure of funds.** The commissioner may authorize the expenditure of any moneys held in the Nongame, Threatened or Endangered Species Fund for the purposes of carrying out this chapter.

3. **Nonlapsing fund.** The Nongame, Threatened or Endangered Species Fund shall not lapse.

4. **Interest on moneys held in the fund.** Any interest earned on any moneys held in the Nongame, Threatened or Endangered Species Fund shall be credited to that fund by the Treasurer of State.

Sec. 10. 36 MRSA § 5284 is enacted to read:

§ 5284. Voluntary contributions to Nongame, Threatened or Endangered Species Fund

1. Form. Each Maine state individual income tax return form shall contain a designation as follows:

Nongame, Threatened or Endangered Species Fund. Check () if you wish to designate \$1, \$5, \$10 or any larger sum of your tax refund for this fund. If joint return, check () if spouse wishes to designate \$1, \$5, \$10 or any larger sum.

Each individual taxpayer required to file a return pursuant to this Part desiring to contribute to the Nongame, Threatened or Endangered Species Fund may designate by placing an "x" in the appropriate box on the state income tax return form and indicating the amount of the contribution, that his contribution shall be credited to that fund.

Any individual who is not entitled to a refund may add the amount of the contribution to his tax liability to be paid to the fund.

2. Contributions credited to fund. The State Tax Assessor shall determine annually the total amount designated pursuant to this section and shall report this amount to the Treasurer of State who shall credit this amount to the Nongame, Threatened or Endangered Species Fund, established under Title 12, section 7961.

STATEMENT OF FACT

The purpose of this bill is to establish a procedure for the protection of nongame, threatened or endangered wildlife within the State.

The Commissioner of Inland Fisheries and Wildlife, together with an advisory board, will be responsible for regulating the taking of nongame, threatened or endangered species and develop programs to insure that this wildlife is developed to its optimum level.

The program will be funded by voluntary contributions from individual income tax refunds.