

1977 Assembly Bill 432

Date published: May 19, 1978

## CHAPTER 370, Laws of 1977

AN ACT to repeal 29.545 and 29.546; to renumber and amend 29.415 (6) and (7); to amend 29.01 (3) (title), 29.415 (title), (1), (3), (4) and (5) (b) and (c) and 227.026 (1) (a); to repeal and recreate 29.415 (2); and to create 20.370 (1) (df), 29.01 (3) (e), 29.175, 29.415 (6) (b) and (c), (7) (b) and (9) and 227.018 (3) of the statutes, relating to establishing a nongame, threatened and endangered species conservation program in the department of natural resources, granting rule-making authority, providing penalties and making an appropriation.

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

SECTION 1. At the appropriate place in the schedule under section 20.005 of the statutes, insert the following amounts for the purposes indicated:

	1977-78	1978-79
<b>20.370 Natural resources, department of</b>		
(1) FORESTRY, WILDLIFE AND RECREATION		
(df) Nongame and endangered and threatened species conservation GPR A	45,000	45,000

SECTION 2. 20.370 (1) (df) of the statutes is created to read:

20.370 (1) (df) *Nongame and endangered and threatened species conservation.* From the general fund, the amounts in the schedule for the administration and implementation of the nongame and endangered and threatened species conservation programs under ss. 29.175 and 29.415.

SECTION 3. 29.01 (3) (title) of the statutes is amended to read:

29.01 (3) (title) GAME; GAME FISH; ROUGH FISH; GAME ANIMALS; FUR-BEARING ANIMALS; GAME BIRDS; NONGAME SPECIES.

SECTION 4. 29.01 (3) (e) of the statutes is created to read:

29.01 (3) (e) "Nongame species" means any species of wild animal not classified as a game fish, game animal, game bird or fur-bearing animal.

SECTION 5. 29.175 of the statutes is created to read:

**29.175 Nongame species.** (1) The department may conduct investigations of nongame species in order to develop scientific information relating to population, distribution, habitat needs, and other biological data in order to determine necessary conservation measures. On the basis of these scientific determinations the department may adopt rules and develop conservation programs designed to ensure the continued ability of nongame species to perpetuate themselves. The rules may require harvest information and establish limitations relating to taking, possession, transportation, processing and sale or offer for sale, in order to conserve nongame species.

(2) No rules adopted or programs developed under this section may impede, hinder or prohibit the utilization of lands for the construction, operation or maintenance of utility facilities otherwise authorized or permitted.

(3) Any action by the department to create, amend or repeal a rule under this section after notice, hearing and publication as provided under ss. 227.02 to 227.027, shall be forwarded to the speaker of the assembly and the president of the senate for referral to and review by the appropriate standing committee of each house as determined by the presiding officer of each. For the purpose of reviewing such

proposed action on a rule, the standing committee may be convened upon call of its chairperson or of a majority of its members. Each standing committee may, within 40 days from receipt of the proposed action, approve or disapprove the proposed action, but failure of a standing committee to disapprove the proposed action within the review time shall constitute approval thereof. The proposed action shall become effective only upon the approval of both committees. This subsection does not apply to emergency rules adopted under s. 227.027.

SECTION 6. 29.415 (title), (1), (3), (4) and (5) (b) and (c) of the statutes are amended to read:

**29.415 (title) Endangered and threatened species protected.** (1) **PURPOSE.** The legislature finds that certain ~~fish and wildlife~~ wild animals and wild plants are endangered or threatened and are entitled to preservation and protection as a matter of general state concern. The federal endangered species act of ~~1969~~ 1973 and the Lacey act together provide for the protection of ~~fish and wildlife~~ wild animals and wild plants threatened with world-wide extinction by prohibiting the importation of endangered ~~fish and wildlife or threatened wild animals and wild plants~~ and by restricting and regulating interstate and foreign commerce in ~~fish and wildlife~~ wild animals and wild plants taken in violation of state, federal and foreign laws. The states, however, must also assume their responsibility for conserving these ~~fish and wildlife~~ wild animals and wild plants and for restricting the taking, possession, transportation, processing or sale of endangered ~~fish and wildlife or threatened wild animals and wild plants~~ within their respective jurisdictions to assure their continued survival and propagation for the aesthetic, recreational and scientific purposes of future generations. The legislature finds that by eliminating the taking, possession or marketing of endangered species in this state and by establishing a program for conservation and restoration of these endangered or threatened species, their potential for continued existence will be strengthened. The legislature further finds that the activities of both individual persons and governmental agencies are tending to destroy the few remaining whole plant-animal communities in this state. Since these communities represent the only standard against which the effects of change can be measured, their preservation is of highest importance, and the legislature urges all persons and agencies to fully consider all decisions in this light.

(3) (title) ENDANGERED AND THREATENED SPECIES LIST. (a) ~~No later than 180 days from April 29, 1972, the~~ The department shall by rule establish an endangered and threatened species list. The list shall consist of 3 parts: ~~fish and wildlife~~ wild animals and wild plants on the U.S. list of endangered and threatened foreign species; ~~fish and wildlife~~ wild animals and wild plants on the U.S. list of endangered domestic and threatened native species; and a list of endangered and threatened Wisconsin species. ~~The list of Wisconsin endangered species shall be compiled by issuing a proposed list of species threatened by state-wide approaching statewide extirpation.~~ Wisconsin threatened species shall be compiled by issuing a proposed list of species which appear likely, within the foreseeable future, to become endangered. Issuance of the proposed lists shall be followed by solicitation of comments and public hearing. ~~Fish and wildlife~~ Wild animals and wild plants shall be deemed ~~threatened with state-wide approaching statewide~~ extirpation if the department determines, based upon the best scientific and commercial data available to it, after consultation with other state game directors, federal agencies and other interested persons and organizations, that the continued existence of such ~~fish and wildlife~~ wild animals and wild plants in this state is endangered in jeopardy.

(b) The department shall ~~annually~~ periodically review and, following public hearing, may revise its endangered and threatened species list ~~and shall submit to the governor a~~ A summary report of the scientific data used to support all amendments to the state's endangered and threatened species list ~~during that year shall be maintained by the department.~~

(c) The department shall may upon the petition of 3 persons review any ~~fish and wildlife on the state-wide list~~ listed or unlisted wild animal or wild plant if such the persons present scientific evidence to warrant such a review, after which the department may by hearing and order rule amend the ~~state-wide~~ statewide list. ~~This order shall be effective immediately upon issuance.~~

(4) PROHIBITION. Except as permitted by departmental rule or permit, ~~no~~:

(a) No person may take, transport, possess, process or sell within this state any fish and wildlife wild animal specified by the department's list of endangered fish and wildlife and threatened species list.

(b) No person may process or sell to another person any endangered or threatened species of wild plant.

(c) No person may remove or transport any endangered or threatened species of wild plant away from its native habitat on public property or property which he or she does not own or lease, except in the course of forestry or agricultural practices or in the construction, operation or maintenance of a utility facility.

(5) (b) Any officer employed and authorized by the department, or any police officer of this state or of any municipality or county within this state, shall have the authority to execute a warrant to search for and seize any goods, business records, merchandise or fish and wildlife wild animal or wild plant taken, employed, used or possessed in violation of this section. Any such officer or agent may, without a warrant ~~and upon probable cause arrest any person suspected of violating this section~~ arrest any person whom the officer or agent has probable cause to believe is violating this section in his or her presence or view. An officer or agent who has made an arrest of a person in connection with any ~~such violation~~ under this section may search ~~such~~ the person or business records at the time of arrest and seize any fish and wildlife wild animals and wild plants, records, or property taken, used or employed in connection with any ~~such~~ violation.

(c) Goods, merchandise, ~~fish, wildlife wild animals, wild plants~~ or records seized under par. (b) shall be held by an officer or agent of the department pending disposition of court proceedings and thereafter be forfeited to the state for destruction or disposition as the department deems appropriate. Prior to forfeiture, the department may direct the transfer of fish and wildlife wild animals or wild plants so seized to a qualified zoological, educational or scientific institution or qualified private propagator for safekeeping with costs assessable to the defendant.

SECTION 7. 29.415 (6) of the statutes is renumbered 29.415 (6) (a) and amended to read:

29.415 (6) (a) The department ~~may~~ shall permit, under such terms and conditions as it may prescribe by rule, the taking, exportation, transportation or possession of any fish and wildlife wild animal or wild plant on the list of endangered and threatened species for zoological, educational or scientific purposes ~~and~~, for propagation of such fish and wildlife wild animals and wild plants in captivity for preservation purposes, unless such exportation, possession, transportation or taking is prohibited ~~or permitted~~ by any federal law or regulation, or any other law of this state.

SECTION 8. 29.415 (6) (b) and (c) of the statutes are created to read:

29.415 (6) (b) Any endangered species of wild animal or wild plant which enters the state from another state or from a point outside the territorial limits of the United States and which is being transported to a point within or beyond the state may enter the state and be transported without restriction in accordance with the terms of any federal permit or permit issued under the laws or regulations of another state.

(c) Possession, sale or transportation within this state of any endangered species on the U.S. list of endangered and threatened foreign species shall not require a state permit under par. (a).

SECTION 9. 29.415 (7) of the statutes is renumbered 29.415 (7) (a) and amended to read:

29.415 (7) (a) The department shall conduct research on the endangered and threatened species of this state and shall ~~review its existing implement~~ ensure that they are programs to directed at conserving, protecting, restoring and propagating selected state-endangered and threatened species to the maximum extent practicable.

SECTION 10. 29.415 (7) (b) and (9) of the statutes are created to read:

29.415 (7) (b) The department may enter into agreements with federal agencies, other states, political subdivisions of this state or private persons with respect to programs designed to conserve endangered or threatened species of wild animals or wild plants. Agreements with private persons under this paragraph may include providing for the movement of an endangered or threatened species to another appropriate habitat, preferably to a habitat located on state-owned or state-leased land.

(9) RULES. Any action by the department to create, amend or repeal a rule under this section after notice, hearing and publication as provided under ss. 227.02 to 227.027, shall be forwarded to the speaker of the assembly and the president of the senate for referral to and review by the appropriate standing committee of each house as determined by the presiding officer of each. For the purpose of reviewing such proposed action on a rule, the standing committee may be convened upon call of its chairperson or of a majority of its members. Each standing committee may, within 40 days from receipt of the proposed action, approve or disapprove the proposed action, but failure of a standing committee to disapprove the proposed action within the review time shall constitute approval thereof. The proposed action shall become effective only upon the approval of both committees. This subsection does not apply to emergency rules adopted under s. 227.027.

SECTION 11. 29.415 (2) of the statutes is repealed and recreated to read:

29.415 (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 fauna or flora is determined by the department to be in jeopardy on the basis of scientific evidence.

(b) "Threatened species" means any species of wild fauna or flora which appears likely, within the foreseeable future, on the basis of scientific evidence to become endangered.

(c) "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.

SECTION 11m. 29.545 and 29.546 of the statutes are repealed.

SECTION 12. 227.018 (3) of the statutes is created to read:

227.018 (3) Subsection (2) does not apply when the prior approval of a rule, or revision or repeal thereof, by any legislative committee is specifically required by law.

SECTION 13. 227.026 (1) (a) of the statutes is amended to read:

227.026 (1) (a) The statute pursuant to which the rule was ~~adopted~~ created, amended or repealed provides for legislative review of the proposed action or otherwise prescribes a different effective date; or

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