

1 AN ACT concerning wildlife.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Illinois Endangered Species Protection Act
5 is amended by changing Sections 5.5, 6, and 7 and by adding
6 Section 5.6 as follows:

7 (520 ILCS 10/5.5)

8 Sec. 5.5. Incidental taking.

9 (a) The Department may authorize, under prescribed terms
10 and conditions, any taking otherwise prohibited by Section 3 if
11 that taking is incidental to, and not the purpose of, the
12 carrying out of an otherwise lawful activity. No taking under
13 this Section shall be authorized by the Department unless the
14 applicant submits to the Department a conservation plan.

15 (b) The conservation plan shall include but not be limited
16 to the following:

17 (1) a description of the impact that the proposed
18 taking is likely to have on one or more species on the
19 Illinois list;

20 (2) the steps the applicant or other parties will take
21 to minimize and mitigate that impact and the funding that
22 will be available to implement those steps, including but
23 not limited to bonds, insurance, or escrow;

1 (3) what alternative actions to the taking the
2 applicant considered and the reasons why those
3 alternatives will not be used;

4 (4) data and information to assure that the proposed
5 taking will not reduce the likelihood of the survival or
6 recovery of the endangered species or threatened species in
7 the wild within the State of Illinois, the biotic community
8 of which the species is a part, or the habitat essential to
9 the species' existence in Illinois;

10 (5) an implementing agreement that specifically names,
11 and describes the obligations and responsibilities of, all
12 the parties that will be involved in the taking as
13 authorized by the permit; and

14 (6) any other measures that the Department may require
15 as being necessary or appropriate for purposes of the plan.

16 (c) After reviewing the application for incidental taking
17 and the conservation plan, the Department may authorize the
18 incidental taking if the Department finds, in a written
19 decision explaining its conclusions, that the taking will meet
20 all of the following requirements:

21 (1) the taking will not be the purpose of, but will be
22 only incidental to, the carrying out of an otherwise lawful
23 activity;

24 (2) the parties to the conservation plan will, to the
25 maximum extent practicable, minimize and mitigate the
26 impact caused by the taking;

1 (3) the parties to the conservation plan will ensure
2 that adequate funding for the conservation plan will be
3 provided;

4 (4) based on the best available scientific data, the
5 Department has determined that the taking will not reduce
6 the likelihood of the survival or recovery of the
7 endangered species or threatened species in the wild within
8 the State of Illinois, the biotic community of which the
9 species is a part, or the habitat essential to the species'
10 existence in Illinois;

11 (5) any measures required under paragraph (6) of
12 subsection (b) of this Section will be performed; and

13 (6) the public has received notice of the application
14 and has had the opportunity to comment before the
15 Department made any decision regarding the application.

16 (d) The Department may require that a party to the
17 conservation plan make additional assurances that the
18 requirements under items (b)(1) through (b)(6) of this Section
19 will be met before authorizing incidental taking.

20 (e) The Department shall impose on the authorization for
21 incidental taking any terms or conditions that the Department
22 finds necessary to ensure that the requirements under items
23 (b)(1) through (b)(6) of this Section will be met. These terms
24 or conditions may include but are not limited to reporting or
25 monitoring requirements.

26 (f) (Blank). ~~If an applicant is party to a Habitat~~

1 ~~Conservation Plan approved by the U.S. Fish and Wildlife~~
2 ~~Service pursuant to Section 10 of the Endangered Species Act of~~
3 ~~1973, P.L. 93-205, and amendments thereto, the Department may~~
4 ~~authorize taking that is incidental to the carrying out of an~~
5 ~~otherwise lawful activity. Authorization shall be issued only~~
6 ~~if the provisions of the Habitat Conservation Plan are found to~~
7 ~~meet the requirements set forth in subsection (c) of this~~
8 ~~Section.~~

9 (g) If an applicant has been authorized to take an
10 endangered or threatened species under the terms of a
11 biological opinion issued by the U.S. Fish and Wildlife Service
12 pursuant to Section 7 of the Endangered Species Act of 1973,
13 P.L. 93-205, and amendments thereto or regulations
14 implementing Section 7 (50 CFR Part 402), the Department may
15 authorize taking that is incidental to the carrying out of an
16 otherwise lawful activity. Authorization shall be issued only
17 if the Department finds that the taking will not reduce the
18 likelihood of the survival or recovery of the endangered
19 species or threatened species in the wild within the State of
20 Illinois, the biotic community of which the species is a part,
21 or the habitat essential to the species' existence in Illinois.
22 (Source: P.A. 91-556, eff. 1-1-00.)

23 (520 ILCS 10/5.6 new)

24 Sec. 5.6. Federal conservation agreements. A permit for
25 incidental taking under Section 5.5 of this Act shall not be

1 required if a federal conservation agreement, including, but
2 not limited to, a candidate conservation agreement, habit
3 conservation plan, or safe harbor agreement, that includes
4 conservation practices conducted in this State in effect and
5 approved by the United States Fish and Wildlife Service under
6 Section 10 of the federal Endangered Species Act of 1973.
7 Incidental taking of species which are listed as endangered or
8 threatened by this State only and not listed by the United
9 States Fish and Wildlife Service shall follow the provisions
10 set forth under Section 5.5 of this Act.

11 (520 ILCS 10/6) (from Ch. 8, par. 336)

12 Sec. 6. There is created the Endangered Species Protection
13 Board whose duties include listing, delisting, or change of
14 listing status of species for the Illinois List, in
15 consultation with and written approval by the Department, in
16 accordance with the Illinois Administrative Procedure Act, on
17 rules for listing species of animals or plants as endangered or
18 threatened and delisting species of animals or plants as
19 endangered or threatened, or changing their status.

20 The Board shall also advise the Department on methods of
21 assistance, protection, conservation and management of
22 endangered and threatened species and their habitats, and on
23 related matters.

24 The Board shall be composed of 9 persons appointed by the
25 Governor, and the Director as a non-voting member. Of the 9

1 appointed members at least 6 shall be persons who are
2 recognized as naturalists by training, avocation or vocation.
3 At least two of these shall be zoologists, at least one a
4 botanist, and at least two ecologists. In making Board
5 appointments of naturalists, the Governor shall give
6 consideration to recommendations of conservation groups. Of
7 the remaining appointed members, 1 member shall be a landowner
8 representing the State's largest general farm organization.

9 Initially, 3 members shall be appointed for terms of 3
10 years, 3 for 2 years and 3 for 1 year. Thereafter, the terms of
11 all appointive members shall be 3 years. Members shall serve
12 until their successors are appointed. Any vacancy occurring in
13 the position of an appointive member shall be filled by the
14 Governor for the unexpired term.

15 Board meetings shall be called at regular intervals set by
16 the Board, on the request of the Department, or upon written
17 notice signed by at least 5 members of the Board, but in no
18 event less than once quarterly. The place of the meeting shall
19 be determined at the convenience of the Board and the
20 Department. A quorum shall consist of 5 appointed members.

21 Members of the Board shall serve without compensation but
22 shall be reimbursed for actual expenses incurred in the
23 performance of their duties.

24 The Board may without regard to the Personnel Code, employ
25 and fix the compensation of necessary staff.

26 The Board shall select from its membership a chairman and

1 such other officers as it considers necessary, and may name an
2 Executive Committee to which it may grant specific powers.

3 The Board shall review and revise the Illinois List as
4 warranted but in no case less frequently than every 5 years. It
5 shall prepare and make available a report of its
6 accomplishments biennially.

7 (Source: P.A. 84-1065.)

8 (520 ILCS 10/7) (from Ch. 8, par. 337)

9 Sec. 7. Any species or subspecies of animal or plant
10 designated as endangered or threatened by the Secretary of the
11 Interior of the United States pursuant to the Endangered
12 Species Act of 1973, P.L. 93-205, as amended, shall be
13 automatically listed as an endangered or threatened species
14 under this Act and thereby placed on the Illinois List by the
15 Board ~~without notice or public hearing~~. The Board may list, as
16 endangered or threatened, species of animals or plants which
17 have reproduced in or otherwise significantly used, as in
18 migration or overwintering, the area which is now the State of
19 Illinois, if there is scientific evidence that the species
20 qualify as endangered or threatened as these terms are defined
21 in this Act. The Board may delist any non-federally-listed
22 species for which it finds satisfactory scientific evidence
23 that its wild or natural populations are no longer endangered
24 or threatened. Listing, delisting or change of listing status
25 shall be made only after a public hearing.

1 Notice of such hearing shall be published at least 7 days
2 before the hearing in a newspaper of general circulation
3 throughout the state and shall be mailed to any person who has,
4 in writing requested such notice from the agency holding the
5 hearing. All persons heard or represented at a hearing and all
6 persons who requested from the responsible agency notice of
7 such hearing, shall be given a written summary of any action
8 taken by the Board or Department relative to the hearing
9 subject.

10 Upon listing or delisting or change of listing status by
11 the Board, the Director shall file a certified copy of the
12 names of the species so listed, delisted or changed with the
13 Secretary of State as provided in "The Illinois Administrative
14 Procedure Act", approved September 22, 1975, as amended.

15 (Source: P.A. 84-1065.)

16 Section 99. Effective date. This Act takes effect upon
17 becoming law.