

TITLE 17: CONSERVATION
CHAPTER I: DEPARTMENT OF NATURAL RESOURCES
SUBCHAPTER c: ENDANGERED SPECIES

PART 1080
INCIDENTAL TAKING OF ENDANGERED OR THREATENED SPECIES

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AUTHORITY: Implementing and authorized by Section 5.5 of the Illinois Endangered Species Protection Act [520 ILCS 10/5.5].

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Section 1080.10 Conservation Plan

Incidental taking of endangered and threatened species shall be authorized by the Department of Natural Resources (Department) only if the applicant submits to the Department a conservation plan that satisfies all criteria established in this Part.

- a) A conservation plan submitted to the Department's Office of Resource Conservation as the application for authorization for incidental taking of an endangered or threatened species shall, at a minimum, include:
 - 1) A description of the impact likely to result from the proposed taking of the species that would be covered by the authorization, including but not limited to:
 - A) legal description, if available, or detailed description including street address and map of the area to be affected by the proposed action and indicia of ownership or control of affected property;
 - B) biological data on the affected species; on

request of the applicant, the Department shall provide biological data in the Department's possession on the affected species;

- C) description of the activities that will result in taking of an endangered or threatened species; and
 - D) explanation of the anticipated adverse effects on listed species.
- 2) Measures the applicant will take to minimize and mitigate that impact and the funding that will be available to undertake those measures, including, but not limited to:
- A) plans to minimize the area affected by the proposed action, the estimated number of individuals of an endangered or threatened species that will be taken and the amount of habitat affected;
 - B) plans for management of the area affected by the proposed action that will enable continued use of the area by endangered or threatened species;
 - C) description of all measures to be implemented to minimize or mitigate the effects of the proposed action on endangered or threatened species;
 - D) plans for monitoring the effects of measures implemented to minimize or mitigate the effects of the proposed action on endangered or threatened species;
 - E) adaptive management practices that will be used to deal with changed or unforeseen circumstances that affect the effectiveness of measures instituted to minimize or mitigate the effects of the proposed action on endangered or threatened species; and
 - F) verification that adequate funding exists to support and implement all mitigation

activities described in the conservation plan. This may be in the form of bonds, certificates of insurance, escrow accounts or other financial instruments adequate to carry out all aspects of the conservation plan.

- 3) A description of alternative actions the applicant considered that would not result in take, and the reasons that each of those alternatives was not selected. A "no-action" alternative shall be included in this description of alternatives.
- 4) Data and information to indicate that the proposed taking will not reduce the likelihood of the survival of the endangered or threatened species in the wild within the State of Illinois, the biotic community of which the species is a part or the habitat essential to the species existence in Illinois.
- 5) An implementing agreement, which shall include, but not be limited to:
 - A) the names and signatures of all participants in the execution of the conservation plan;
 - B) the obligations and responsibilities of each of the identified participants with schedules and deadlines for completion of activities included in the conservation plan and a schedule for preparation of progress reports to be provided to the Department;
 - C) certification that each participant in the execution of the conservation plan has the legal authority to carry out their respective obligations and responsibilities under the conservation plan;
 - D) assurance of compliance with all other federal, State and local regulations pertinent to the proposed action and to execution of the conservation plan; and
 - E) copies of any final federal authorizations for a taking already issued to the applicant, if

any.

- b) The Department, after review and public comment, may require additional measures as necessary or appropriate to the success of the conservation plan. Requirements for additional measures shall be based on the life history needs of the species involved.
- c) A Habitat Conservation Plan approved by the U.S. Fish and Wildlife Service pursuant to Section 10 of the Endangered Species Act of 1973 [26 USC 1539], and amendments thereto, may be submitted in lieu of the conservation plan described in this Section.
- d) Authorization to take an endangered or threatened species under the terms of a biological opinion issued by the U.S. Fish and Wildlife Service pursuant to Section 7 of the Endangered Species Act of 1973 [26 USC 1536], and amendments thereto, or regulations implementing Section 7 [50 CFR 402] may be submitted in lieu of the conservation plan described in this Section.

Section 1080.20 Notice and Review of Conservation Plans

- a) After receipt of a conservation plan, the Department shall, within 30 days, review the conservation plan to determine if all required information has been provided by the applicant and:
 - 1) acknowledge receipt of the complete conservation plan in writing; or
 - 2) notify the applicant in writing of any deficiencies in the conservation plan and provide the applicant an opportunity to supply additional information to the Department. Any late-breaking or additional information will be considered part of the conservation plan for purposes of this Part.
- b) When the applicant is notified by the Department that the conservation plan is complete as defined in this Part, the applicant shall place a notice in a local newspaper of general circulation in the locality of the proposed action at least once a week for 3 consecutive weeks. At least 14 days shall elapse between the first and last publications of the notice. The notice shall also be

published one time in the official State newspaper, concurrent with the first publication in a local newspaper of general circulation. A copy of the notice as it will appear in the newspaper shall be submitted to the Department for approval before the first publication. The notice shall include, at a minimum, the following:

- 1) the name and mailing address of the applicant;
 - 2) a map or description that clearly shows or describes the precise location and boundaries of both the area to be affected by the proposed project and any areas to be affected by provisions of the conservation plan and is sufficient to enable local residents to readily identify the subject areas. It must include towns, bodies of water, local landmarks, or any other information that would identify the subject areas. If a map is used, it shall indicate the north direction;
 - 3) a summary of the incidental taking for which authorization is being requested;
 - 4) a summary of the measures that will be instituted to minimize and mitigate the effects of the proposed incidental taking;
 - 5) the location where a copy of the conservation plan is available for inspection;
 - 6) the street and e-mail address of the office of the Department to which comments on the conservation plan may be submitted; and
 - 7) the closing date for receipt of written comments on the conservation plan.
- c) The applicant shall:
- 1) provide copies of the conservation plan to be available for review at the nearest public library in the county or counties in which the proposed action will occur. Copies distributed for public review shall not include any trade secrets as defined by the Illinois Trade Secrets Act [765 ILCS 1065/2(d)]; and

- 2) provide copies of the conservation plan to the Executive Director of the Illinois Endangered Species Protection Board (Board).
- d) After the applicant's public notice is approved by the Department, the Department shall provide notice of the receipt of the conservation plan to any person who has requested notice. The Department shall maintain a permanent list of those persons or organizations that wish to be notified of all conservation plans it receives.

Section 1080.30 Comments

Written comments on a conservation plan may be submitted to the Department by any person within 30 days after the last publication of the notice required by Section 1080.20(b). Comments will be accepted by electronic mail upon confirmation of authorship. The Department shall, upon receipt of written comments, transmit a copy of the comments to the applicant. The applicant shall evaluate the public comments received from the Department and shall submit an analysis of the comments no later than 10 days after the close of the public comment period. The analysis shall include a list of all persons or organizations making comment; a list of the criticisms, suggestions and comments raised; and the applicant's analysis of each criticism, suggestion or comment. The analysis shall also include a description of any revision to the Conservation Plan that the applicant is making in response to public comment. The comments and the applicant's analysis may be used by the Department pursuant to Section 1080.30 to support any additional measures that may be necessary or appropriate to assure the success of the Conservation Plan.

Section 1080.40 Final Review

- a) The Department's Office of Resource Conservation shall coordinate and perform the review of the conservation plan and issue the incidental take authorization pursuant to this Part. The Department shall complete its review of the conservation plan within 120 days after the first publication of the notice required in Section 1080.20(b). After reviewing the conservation plan, the Department may authorize the incidental taking if the Department finds that the taking will meet all of the following requirements:

- 1) the taking will not be the purpose of, but will be only incidental to, the carrying out of an otherwise lawful activity;
 - 2) the parties to the conservation plan will, to the maximum extent practicable, minimize and mitigate the impact caused by the taking;
 - 3) the parties to the conservation plan will ensure that adequate funding for the conservation plan will be provided as described in Section 1080.10(a)(2)(F);
 - 4) based on the best available scientific data, the Department has determined that the taking will not reduce the likelihood of the survival of the endangered species or threatened species in the wild within the State of Illinois, the biotic community of which the species is a part, or the habitat essential to the species' existence in Illinois;
 - 5) any additional measures, based upon the life history needs of the species involved, that the Department may require as necessary or appropriate for the purposes of the conservation plan will be performed;
 - 6) the public has received notice of the availability of the conservation plan and has had the opportunity to comment before the Department made any decision regarding the authorization of incidental take; and
 - 7) the Department has sought the advice of the Board and provided written response to any Board comments regarding the issuance of authorization for incidental taking and on the terms of any authorization to be issued.
- b) If the Department finds that the conservation plan does not meet the above requirements, the Department may require that a party to the conservation plan make additional assurances or agree to additional terms and conditions that the Department finds necessary to assure

that the requirements in subsections (a)(1) through (a)(6) will be met before authorizing incidental taking. Requirements for inclusion of additional assurances in a conservation plan shall be based on the life history needs of the species involved. The Department shall deny an authorization for incidental taking if the conservation plan does not meet the requirements of subsection (a) and the applicant refuses to accept the additional terms and conditions or refuses to make additional assurances determined necessary by the Department.

Section 1080.50 Notice of Decision

- a) The Department shall provide written notice to the applicant of the approval or denial of authorization for incidental taking. The written notice shall constitute the authorization for incidental taking or the denial of the authorization for incidental taking is effective as of the date of execution by the Director of the Department's Office of Resource Conservation.
- b) The Department shall make available to any person who requests it a copy of any written notice authorizing incidental taking.

Section 1080.60 Effective Date, Term

Any authorization for incidental take issued pursuant to 520 ILCS 10/5.5 and this Part shall have an effective date and term. The term of the authorization for incidental take shall be sufficient to assure that the terms and conditions of the authorization and the measures described in the conservation plan may be fully executed and that monitoring of the effects of those measures can be carried out for a length of time that will determine their adequacy for protection and enhancement of the endangered or threatened species.

Section 1080.70 Separability, Exclusions

- a) Authorization for incidental taking shall be separate and distinct from any other action of the Department. Issuance of any permit, license or authorization by the Department under any authority other than that granted in Section 5.5 of the Illinois Endangered Species Protection Act shall not constitute authorization for incidental

take. Issuance of any permit, license or authorization by the Department under any authority other than that granted in Section 5.5 of the Illinois Endangered Species Protection Act shall not be interpreted as an assurance that incidental take authorization will be issued.

- b) Certain activities that are planned, designed and executed for the benefit of one or more endangered or threatened species and may result in the incidental take of individuals of those species are exempt from the provisions of this Section. Exempt activities shall be those listed in 17 Ill. Adm. Code 1075.30(c). The Department shall have the right to require persons carrying out such activities to submit information to justify the claimed exemption from this Section.

Section 1080.80 Appeal, Revocation

- a) The applicant may appeal a denial of authorization for incidental taking. Such appeal shall be heard pursuant to Subpart C of 17 Ill. Adm. Code 2530 - Department Formal Hearings for Rulemaking and Contested Cases.
- b) Authorization issued under this Part may be revoked by the Department for failure to implement any provision of the conservation plan. The Department shall issue notice of the revocation and, if requested by the permittee, may conduct a hearing on the revocation pursuant to Subpart C of 17 Ill. Adm. Code 2530 - Department Formal Hearings Conducted for Rulemaking and Contested Cases. Revocation of a permit may subject the permittee to criminal penalties as provided in the Endangered Species Protection Act if a taking is found subsequent to the revocation or if the taking is proximate to the failure to implement the conservation plan.