

TITLE 17: CONSERVATION
CHAPTER V: NATURE PRESERVES COMMISSION

PART 4020
INVENTORIES, REGISTERS AND RECORDS

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Section	
4020.310	Data Use and Limitations

AUTHORITY: Implementing and authorized by Sections 6 and 7 of the Illinois Natural Areas Preservation Act [525 ILCS 30/6 and 7].

SOURCE: Adopted at 38 Ill. Reg. 2879, effective January 10, 2014.

SUBPART A: GENERAL PROVISIONS

Section 4020.110 Purpose

The purpose of this Part is:

- a) To clarify the type of data included in inventories, registers and records compiled and maintained on behalf of the Commission.

- b) To establish and describe fees to recover the actual cost of collecting, storing, managing, compiling and providing access to natural heritage data, including inventories, registers and records required by Section 6.01 of the Act.
- c) To describe the limits on how accessed natural heritage data may be used.

Section 4020.120 Applicability

This Part applies to all natural heritage data compiled and maintained on behalf of the Commission as required by Section 6.01 of the Act.

Section 4020.130 Definitions

As used in this Part, the following terms have the meanings indicated, except where context requires otherwise:

"Act" means the Illinois Natural Area Preservation Act [525 ILCS 30].

"Board" means the Illinois Endangered Species Protection Board created by Section 6 of the Illinois Endangered Species Protect Act [520 ILCS 10/6].

"Commission" means the Illinois Nature Preserves Commission created by Section 4 of the Act.

"Department" means the Illinois Department of Natural Resources.

"Element Occurrence" means an area of land and/or water in which a species is, or was, reported to be present or means a local population.

"Licensee" means any person licensed to use natural heritage data subject to the terms of a Data Licensing Agreement.

"Natural Areas Acquisition Fund" means the Illinois Natural Areas Acquisition Fund established in Section 14 of the Open Space Lands Acquisition and Development Act [525 ILCS 35/14]. The fund is used by the Department for the acquisition, preservation and stewardship of natural areas, including habitats for endangered and threatened species, high quality natural communities, wetlands, and other areas with unique or unusual natural heritage qualities.

"Natural Heritage Data", "Natural Heritage Database" or "Data" means recorded information on the biology, existence and locations of threatened and endangered species and other species; protective status of these species; inventories of natural features, including, but not limited to, the Illinois Natural Areas Inventory sites

and the resources that allow a site to qualify; and means data collected pursuant to 17 Ill. Adm. Code 4010 (Register of Land and Water Reserves). Natural heritage data is owned by the State of Illinois and compiled and maintained by the Department's Natural Heritage Database Program as a service to assist, and in cooperation with, the Commission and the Board. Access to natural heritage data shall be in the form of spatial data, reports or custom data formats subject to Natural Heritage Database Program approval.

"Natural Heritage Database Program" or "NHD Program" means the program within the Department responsible for maintaining the natural heritage data.

"Quadrangle" means one of 1,071 U.S. Geological Survey 1:24,000-scale topographic maps covering the State of Illinois, also known as 7.5-minute quadrangles.

"Person" means any individual, corporation, partnership, firm, organization, association, government entity or agency, or body politic.

"T&E Species" or "Threatened and Endangered Species" means any species or subspecies listed by the Board pursuant to Section 7 of the Illinois Endangered Species Protection Act.

Section 4020.140 Penalties

Any person who violates this Part, falsifies or makes any misrepresentation in the data licensing agreement, required records, or any other information required to be given to the Department shall be subject to the penalties set forth in Section 22 of the Act.

SUBPART B: DATA REQUESTS AND FEES

Section 4020.210 General

- a) A fee will be charged (see Section 4020.240) for compiling and providing natural heritage data for any persons requesting that information for research, educational, environmental, land management, land development and similar purposes. All fees are non-refundable.
- b) The Commission shall, at a regular public meeting held pursuant to 2 Ill. Adm. Code 2150.210 through 2150.280, review natural heritage data fees at least every 5 years to assess whether those fees are meeting NHD Program costs. The Commission shall promulgate any necessary fee changes by modifying this Part in consultation with the Department.

- c) The Commission and Department shall enter into a Data Licensing Agreement with licensees to provide natural heritage data and collect fees pursuant to this Part.
- d) Revenues generated specifically under the natural heritage data fee shall be deposited into the Natural Areas Acquisition Fund and appropriated to the Department for the purpose of collecting, storing, managing, compiling and providing access to support, maintain and update the NHD and its data. Department costs with respect to the NHD include, but are not limited to, personnel, information technology and data collection costs. All fees shall be tracked with a unique identifying code.
- e) Distribution of data to third parties is prohibited.

Section 4020.220 Submitting Data Requests

- a) Requests for natural heritage data shall be submitted via the online system or in writing via mail, electronic mail or fax. Requests should be directed to the Natural Heritage Database Program, Office of Resource Conservation, Illinois Department of Natural Resources, One Natural Resources Way, Springfield IL 62702.
- b) Persons requesting and receiving natural heritage data via written request shall provide the following:
 - 1) Contact information (name, company/organization, address, telephone number, and electronic mail address);
 - 2) Desired data and format;
 - 3) Geographic extent of desired data;
 - 4) Explanation of how the data will be used and who will have access to the data; and
 - 5) Payment of fees in full unless alternate arrangements are made.
- c) All persons requesting and receiving natural heritage data via written request shall first be required to sign a one-year Data Licensing Agreement that dictates the conditions for use of the data. Fees shall be paid in full before natural heritage data is provided unless alternate arrangements are made. Licensing agreements may be renewed on a yearly basis. Distribution of data to third parties, including that from a consultant to client or subcontractor to contractor, is prohibited.

Section 4020.230 Request Denial

- a) Requests contrary to the purposes of the Act, or for purposes in violation of the Wildlife Code [520 ILCS 5], the Fish and Aquatic Life Code [515 ILCS 5], or the Illinois Endangered Species Protection Act shall be denied.
- b) If it is determined that a licensee has violated the terms of the Data Licensing Agreement or is in violation of Section 4020.310, all rights to use the data shall be immediately revoked and any future requests for natural heritage data shall be denied.
- c) Natural heritage data are exempt from disclosure as valuable formulae, computer geographic systems, designs, drawings and research data obtained or produced by any public body when disclosure could reasonably be expected to produce private gain or public loss, as allowed by Section 7(i) of the Freedom of Information Act [5 ILCS 140/7(i)].

Section 4020.240 Fees

- a) Base Fee. There will be a base fee for each request in addition to spatial data and report fees. The base fee is \$75 per request.
- b) Spatial Data Fees. Spatial natural heritage data layers will be provided in Geographic Information System (GIS) format.
 - 1) Quadrangle Rate. Fees for spatial natural heritage data will be assessed a fee for each topographic quadrangle. Project sites will be buffered 5 miles and requesters will be charged for each quadrangle intersected. The quadrangle rate fee is \$50 per quadrangle.
 - 2) Linear Rate. Fees for spatial natural heritage data for linear projects measuring greater than 25 miles in length and less than 0.5 miles in width are assessed a fee of \$15 per quadrangle intersected by the project line. Requestors are required to submit their linear project area in GIS format, or else the Quadrangle Rate will apply. Linear project boundaries will be buffered by one mile on each side of the project line and data will be provided for that area.
 - 3) Custom Rate. Fees for custom data requests will be assessed by the NHD Program manager at the time of the request.
- c) Report Fees. Report data will be provided in PDF or Excel format.

- 1) **Quadrangle Reports.** The fee for reports detailing information about the natural heritage data that occurs within a topographic quadrangle is \$50 per quadrangle.
 - 2) **Linear Reports.** The fee for reports detailing information about natural heritage data that occurs in linear project areas measuring greater than 25 miles in length and less than 0.5 miles in width are assessed a fee of \$15 per quadrangle intersected by the project line. Requestors are required to submit their linear project area in GIS format, or else the Quadrangle Report Rate will apply. Linear project boundaries will be buffered by one mile on each side of the project line and report data will be provided for that area.
 - 3) **Species Reports.** The fee for reports detailing information about T&E species is \$25 per element occurrence.
 - 4) **Custom Reports.** Fees for custom report requests will be assessed by the NHD Program manager at the time of the request.
- d) Natural heritage data fees will be capped at no more than \$20,000 per requestor.
 - e) Users of natural heritage data accessed through the Department's EcoCAT system will be assessed a fee of \$25 and the base fee will be waived.

Section 4020.250 Data Updates

Natural heritage data is updated on a daily to quarterly basis, depending on the dataset. Therefore, licensees are encouraged to get updated data as appropriate based on their project parameters. Spatial data updates are free during the one-year Data Licensing Agreement period. The update must be for data within the same portion of the State covered in the Data Licensing Agreement. Licensees are allowed up to 3 data updates in a calendar year and must request their own updates.

Section 4020.260 Exceptions: Discounts and Waivers

- a) No fees shall be charged to the Department, Commission or Board for requests that fulfill the day-to-day operational needs of the Department, Commission or Board, including land management planning, status assessment and land owner contact.
- b) Fees may be waived or reduced in writing under select circumstances, including:

- 1) Written agreements with the Department, Commission or Board in which Department, Commission or Board costs are reimbursed or offset and/or in which the request furthers Department, Commission or Board missions.
- 2) Requests for college students actively working on a thesis or dissertation research project determined by Department, Commission or Board to further Department, Commission or Board missions.
- c) Requesters shall be assessed the base fee even when a discount or waiver is given.
- d) No waiver or reduction of fees shall, in any way, impair the State of Illinois' ownership or licensing rights to the natural heritage data provided.

Section 4020.270 Collection of Fees

- a) Fee payment is expected at the time of the request unless alternate arrangements are made.
- b) Fees may be paid online, when available, or by certified or cashier's check payable to the Illinois Natural Heritage Database Program, to the Natural Heritage Database Program – Office of Resource Conservation, Illinois Department of Natural Resources, One Natural Resources Way, Springfield IL 62702. No cash payments will be accepted.
 - 1) Payment shall not include any other fees or payments due to the Department for any purpose other than the fee due under this Part.
 - 2) Payment of fees shall be deposited in the Natural Areas Acquisition Fund and tracked separately.
 - 3) No fee remitted to the Department under this Part shall be refunded in whole or in part at any time for any reason.
 - 4) Payment of fees that constitutes an overpayment or underpayment will be returned to the data requestor.

SUBPART C: DATA USE AND LIMITATIONS

Section 4020.310 Data Use and Limitations

- a) Natural heritage data is non-transferable and cannot be provided to third parties. Any and all requests for data access from third parties shall be directed to the NHD Program by the licensee. Licensees, such as consultants or subcontractors,

may not provide natural heritage data to third parties, such as a client or contractor. If the third party needs the natural heritage data for a project, the third party must also pay the fee and sign a Data License Agreement.

- b) The accuracy of this data is time-limited as the NHD is updated on a daily to quarterly basis. Licensees are encouraged to get data updates.
- c) If the licensee is a governmental or private entity, the licensee shall ensure that access to the data is limited to those individuals within the entity who require access to the data for the stated project and purpose of the Data Licensing Agreement. The licensee is responsible for ensuring that all such individuals understand and adhere to the terms of the Data Licensing Agreement.
- d) Release of precise species locations may threaten natural heritage resources. Licensees shall take reasonable precautions to ensure the confidentiality of T&E species locations. When precise locations need to be displayed in publicly-accessible documents or websites, species location should be generalized or displayed without species' names when possible.
- e) Licensees must provide the NHD Program with any T&E species information that is collected during the term of the Data Licensing Agreement so as to keep the natural heritage database current. This information includes species location, date observed, names of observers, and number observed.
- f) Licensees shall identify the "Illinois Department of Natural Resources, Illinois Nature Preserves Commission, Illinois Endangered Species Protection Board, and Natural Heritage Database" as the data source on any map or publication and shall include the release date of the data.
- g) Natural heritage data is provided for planning and assessment purposes only. Receipt of the data does not constitute Department, Commission or Board review or authorization of any proposed project and does not exempt the licensee from securing necessary permits and approvals from the Department, Commission, Board or other regulatory agency.
- h) Data maintained by the NHD Program is gained from the best and most recent information available and undergoes quality control and quality assurance. Because environmental conditions change daily, the NHD Program cannot provide a conclusive statement on the presence, absence or condition of significant natural features identified in the NHD and can only summarize the information known at the time of each agreement. An executed Data Licensing Agreement shall not constitute Department, Commission or Board validation of the Licensee's interpretation of the data.

- i) The natural heritage data being provided constitutes a representation of the more extensive information available in manual and electronic files.