

Express Terms (Text)

Amend Part 182 of 6 NYCRR as follows:

Amend subdivision 6 NYCRR 182.2 as follows:

(g) 'Experimental population' means a group of individuals of [members of an extirpated] a threatened or endangered species listed in this Part that has been designated by the department in accordance with 182.17 of this Part [is being re-introduced into suitable habitat] for introduction into an experimental population area to aid in the recovery of the species within [its historic range in] New York.

(h) 'Experimental population area' means a discrete geographical area composed of sufficient, suitable habitat capable of sustaining a population of a specific listed species that is established in accordance with 182.17 of this Part for the purposes of establishing an experimental population.

(i) [(h)] *Extinct* means species no longer living or existing.

(j) [(i)] *Extirpated* or *Extirpation* means not extinct, but no longer occurring in a wild state within New York, or no longer exhibiting patterns of use traditional for that species in New York (e.g., historical breeders no longer breeding here).

(k) [(j)] *Incidental take* means any taking of a species listed as endangered or threatened in section 182.5 of this Part and otherwise prohibited by section 11-0535 of the Environmental Conservation Law that is incidental to, and not the intended purpose of, an otherwise lawful activity.

(l) [(k)] *Incidental Take Permit* means a document issued by the department pursuant to section 11-0535 of the Environmental Conservation Law and this Part allowing the incidental take of any species listed as endangered or threatened in this Part.

(m) [(l)] *Lesser acts* means, for the purposes of this Part, harassing, harming, maiming, wounding or collecting any species listed as endangered or threatened in section 182.5 of this Part, any act which is likely to cause the death of or injury to any individual member(s) of a species listed as endangered or threatened in section 182.5 of this Part, any adverse modification of habitat of any species listed as endangered or threatened in section 182.5 of this Part, and any interference with or impairment of an essential behavior of a species listed as endangered or threatened in section 182.5 of this Part.

(n) [(m)] *Native* means any species that spends some portion of its life cycle within New York State, has occurred here on a regular basis for many years, and was not intentionally or accidentally released into New York. A species is also considered native if it formerly met the conditions of this definition.

(o) [(n)] *Net conservation benefit* means a successful enhancement of the species' subject population, successful enhancement of the species' overall population or a contribution to the recovery of the species within New York. To be classified as a net conservation benefit, the enhancement or contribution must benefit the affected species listed as endangered or threatened in this Part or its habitat to a greater degree than if the applicant's proposed activity were not undertaken.

(p) [(o)] *Occupied habitat* means a geographic area in New York within which a species listed as endangered or threatened in this Part has been determined by the department to exhibit one or more essential behaviors. Once identified as occupied habitat, the department will continue to consider that area as occupied habitat until the area is no longer suitable habitat for that species or monitoring has indicated that reoccupation by that species is unlikely.

(q) [(p)] *Person* means any Federal or State department, agency, board, public benefit corporation, public authority or commission, a county, municipal corporation, or any other political subdivision of the State, and any individual, corporation, partnership, firm or any other legal entity whatsoever.

(r) [(q)] *Population* means members of the same species occupying a defined geographic area of limited extent.

(s) [(r)] *Regional permit administrator* means an employee of the department located in one of the nine regional offices of the department and designated to act on the Commissioner's behalf in carrying out the provisions of 6 NYCRR Part 621 (Uniform Procedures).

(t) [(s)] *Self-sustaining* means a species or population whose abundance and distribution throughout the State is maintained by natural recruitment at a level sufficient to allow for its continued existence such that there is not a need for ongoing, intensive management or intervention.

(u) [(t)] *Species* means any subspecies, distinct group or any distinct population segment of any such group of fish or wildlife which interbreeds when mature. The term species refers not only to independent or adult individuals, but also to any life form, stage, or part of the species, including but not limited to eggs, larvae or pupae. The term species does not include fish or wildlife produced as a result of artificial hybridization.

(v) [(u)] *Species of special concern* are native species of fish and wildlife found by the department to be at risk of becoming threatened in New York based on the criteria for listing in section 182.4(a) of this Part and that are listed species of special concern in section 182.5(c) of this Part. Species of special concern do not qualify as either

endangered or threatened, as defined in subdivisions (e) and (y) of this section, but have been determined by the department to require some measure of protection to ensure that the species does not become threatened. Species of special concern are listed in section 182.5(c) of this Part and are protected wildlife pursuant to Environmental Conservation Law section 11-0103(5)(c).

(w) [(v)] *Subject population* means any individual member(s) of any species listed as endangered or threatened in this Part utilizing occupied habitat within or adjacent to the geographic area of an activity subject to this Part.

(x) [(w)] *Subspecies* means a taxonomic group that is a division of a species and usually, but not always, arises as a consequence of geographical isolation within a species. The term subspecies does not include fish or wildlife produced as a result of artificial hybridization.

(y) [(x)] *Take* or *taking* means the pursuing, shooting, hunting, killing, capturing, trapping, snaring and netting of any species listed as endangered or threatened in this Part, and all lesser acts such as disturbing, harrying or worrying.

(z) [(y)] *Threatened species* are any species that:

(1) are native species likely to become an endangered species within the foreseeable future in New York based on the criteria for listing in section 182.3(b) of this Part and that are listed as threatened in section 182.5(b) of this Part; or

(2) are species listed as threatened by the United States Department of the Interior in the *Code of Federal Regulations* (50 CFR part 17).

Amend subdivision 6 NYCRR 182.3(b)(3) as follows:

(3) whether the species is designated as a Federal candidate species under the Federal Endangered Species Act or is listed as endangered or threatened in [any] three or more adjacent states or provinces;

Amend subdivision 6 NYCRR 182.4(a)(1) as follows:

(1) The species is designated as a Federal Candidate species under the Federal Endangered Species Act or is listed as endangered or threatened in any adjacent state or province[three or more adjacent states or provinces];

Amend subdivision 6 NYCRR 182.9(b) as follows:

(b) A request for a determination under subdivision (a) of this section shall be directed to the appropriate regional permit administrator, shall be in writing and shall, at a minimum, contain a full description of the activity being proposed that includes a proposed site plan showing the limits of disturbance and a map of the location of the proposed activity that includes the address and tax parcel identification.

Amend subdivision 6 NYCRR 182.9(c) as follows:

(c) *Department response to request for determination.*

(1) Within 30 calendar days of receipt of a request for determination, the department shall provide a written answer to the person making the request stating whether the proposed activity is subject to regulation under this Part, requesting additional information necessary to make such a determination, or advising that one or more of the factors cited in paragraph (3) of this subdivision require an extension of the 30-day time period.

(2) If the department determines that the proposed activity is subject to regulation under this Part, the department's response must describe the take or taking that may

result from the proposed activity, including any adverse modification of habitat and/or interference with or impairment of an essential behavior of a species listed as endangered or threatened in section 182.5 of this Part.

(3) In the event that weather, the subject species' essential behavior, habitat conditions or other environmental factors prevent the department from making a determination within 30 calendar days, it may extend such time period until a determination can be made.

(4) If the department determines the proposed activity is not subject to regulation under this Part, the department's determination is valid for one year from date of issuance as long as there are no changes to the activities or locations proposed in the jurisdictional request and no federally listed species are confirmed within the project footprint prior to the expiration of one year.

(d) All determinations made under this section will be kept on file at the appropriate regional office for three years.

Amend subdivision 6 NYCRR 182.13(a)(3) to read as follows:

(3) A taking of any species listed as endangered or threatened in this Part resulting from existing, routine and ongoing agricultural activities. For purposes of this section, routine and ongoing agricultural activities include but are not limited to cultivation and tillage of soil, crop rotation, fallowing, grazing and watering of livestock, making reasonable use of water resources, planting or harvesting natural or agricultural products, and otherwise engaging in the use of land for growing agricultural products. For purposes of this section, routine and ongoing agricultural activities must have occurred on the property

within the previous 5 years and do not include forest management activities or the conversion of agricultural land to non-agricultural use.

Add new paragraphs 6 NYCRR 182.13(a)(6) and (7) to read as follows:

(6) Activities that would result in incidental take of members of an experimental population within an experimental population area designated pursuant to 182.17.

(7) Activities that adversely impact occupied habitat that occurs entirely within or upon manufactured structures or dwellings when listed species, including active nests, eggs or young, are not present. For the purposes of this section, this applies to all human construction with the exception of abandoned mines and human-modified caves and tunnels that serve as hibernacula for listed bats.

Delete subdivision 6 NYCRR 182.13(b)

Amend 6 NYCRR 182 to add new section 182.17 as follows:

182.17 Experimental Population Designation

(a) Experimental populations are designated by the department through the following process:

(1) A proposal is prepared that meets the following criteria:

(i) The proposal must identify the species and define the experimental population area covered by the experimental population designation.

(ii) Experimental population areas must be geographically distinct from existing habitat occupied by the target species. The boundaries of experimental population areas will follow existing county, town, village and water body

boundaries to the maximum extent practicable.

(iii) To be considered as an experimental population area, the Department must conclude that enough suitable habitat, in terms of quantity, quality, and existing protected status, exists in the geographic area to be designated such that the likelihood of successful establishment is reasonably assured.

(2) The department will publish the proposal in the *Environmental Notice Bulletin* and provide notice of publication to the chief executive officer(s) of the municipality or municipalities in the affected geographic area identified in the proposal.

(3) Upon publication in the *Environmental Notice Bulletin*, there will be a 30 day public comment period that begins on the day of publication.

(4) Upon completion of the public comment period, the department will make a decision to adopt, modify or reject the proposal.

(5) If the department modifies the proposal, it will republish the modified proposal and resume the process as indicated in part (2) of this subsection.

(6) If the department adopts the proposal, the experimental population designation becomes official upon the date of publication by the department of its decision to adopt the proposal in the *Environmental Notice Bulletin*.

(b) Once designated as an experimental population, that designation continues until the species is removed from the list of threatened and endangered species in 182.5.

(c) Animals of a listed species that occur within an experimental population area designated for that species are protected wildlife pursuant to 11-0103(6)(c) and are protected from intentional take, but their presence cannot be used to identify occupied habitat for regulatory purposes within the experimental population area.

