

Michigan Office of Administrative Hearings and Rules

Administrative Rules Division (ARD)

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**REGULATORY IMPACT STATEMENT
and COST-BENEFIT ANALYSIS (RIS)**

Agency Information:

Department name:

Natural Resources

Bureau name:

Wildlife Division

Name of person filling out RIS:

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Rule Set Information:

ARD assigned rule set number:

2022-11 NR

Title of proposed rule set:

Endangered and Threatened Species

Comparison of Rule(s) to Federal/State/Association Standard

1. Compare the proposed rules to parallel federal rules or standards set by a state or national licensing agency or accreditation association, if any exist.

Public Act 451 of 1994, Part 365 prohibits take of endangered and threatened species identified in the rule set, similar to the way the Federal Endangered Species Act (16 U.S.C. §1531 et seq. (1973)) prohibits take of species on the Federal List of Endangered and Threatened Wildlife and Plants. All species on the Federal list are protected by Public Act 451, Part 365. Additional species that are not included on the Federal List of Endangered and Threatened Wildlife and Plants but that are considered to be threatened or endangered within Michigan's borders are included in the rule set.

A. Are these rules required by state law or federal mandate?

Yes. The Department of Natural Resources is required, under MCL 324.36503(1), to promulgate rules listing those species of fish, plants, and wildlife that are determined to be endangered or threatened within the State of Michigan. The Department of Natural Resources is also required, under MCL 324.36503(2), to conduct a review of the state list of endangered and threatened species every 2 years and may amend the list as needed.

B. If these rules exceed a federal standard, please identify the federal standard or citation, describe why it is necessary that the proposed rules exceed the federal standard or law, and specify the costs and benefits arising out of the deviation.

The proposed rules do not exceed a federal standard; however, compared to the Federal List of Endangered and Threatened Wildlife and Plants, the rule set includes a greater number of Michigan species. Thus, Public Act 451, Part 365 protects a greater number of species in Michigan than the Federal Endangered Species Act does.

2. Compare the proposed rules to standards in similarly situated states, based on geographic location, topography, natural resources, commonalities, or economic similarities.

While the Federal Endangered Species Act provides federal guidelines for the protection of endangered and threatened species, states have statutes that allow state governments to identify species within their borders in danger of extinction and provide some form of protection. There are approximately 44 states, including all the Great Lake states, that have some version of a state Endangered Species Act, and these acts are aimed at listing species that have been deemed in danger of extinction within the state's borders based on regional concerns. State Endangered Species Acts may include federally listed species and additional species not listed under the Federal Endangered Species Act.

A. If the rules exceed standards in those states, please explain why and specify the costs and benefits arising out of the deviation.

The rules don't exceed similar standards in other states.

3. Identify any laws, rules, and other legal requirements that may duplicate, overlap, or conflict with the proposed rules.

The rules partially overlap with the Federal Endangered Species Act because the Federal List of Endangered and Threatened Wildlife and Plants is incorporated into the rule set.

A. Explain how the rules have been coordinated, to the extent practicable, with other federal, state, and local laws applicable to the same activity or subject matter. This section should include a discussion of the efforts undertaken by the agency to avoid or minimize duplication.

The Federal List of Endangered and Threatened Wildlife and Plants is incorporated into the rule set.

4. If MCL 24.232(8) applies and the proposed rules are more stringent than the applicable federally mandated standard, provide a statement of specific facts that establish the clear and convincing need to adopt the more stringent rules.

The proposed rules are not more stringent than the Federal List of Endangered Wildlife and Plants. The proposed rules are more comprehensive and encompassing because the Federal List of Endangered Wildlife and Plants is incorporated into the proposed rule set.

5. If MCL 24.232(9) applies and the proposed rules are more stringent than the applicable federal standard, provide either the Michigan statute that specifically authorizes the more stringent rules OR a statement of the specific facts that establish the clear and convincing need to adopt the more stringent rules.

Compared to the Federal List of Endangered and Threatened Wildlife and Plants, the rule set includes a greater number of Michigan species. Thus, Public Act 451 of 1994, Part 365 protects a greater number of species in Michigan than does the Federal Endangered Species Act.

Purpose and Objectives of the Rule(s)

6. Identify the behavior and frequency of behavior that the proposed rules are designed to alter.

The rule set identifies species for which "take" is restricted under Public Act 451 of 1994, Part 365. With regards to threatened and endangered animals, "take" means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, collect, or attempt to engage in any such conduct. Regarding threatened and endangered plants, "take" means to collect, pick, cut, dig up or destroy in any manner. Without the rule set, legal take would be expected to occur frequently, because of collection, habitat degradation and destruction, and other actions that harm rare species.

A. Estimate the change in the frequency of the targeted behavior expected from the proposed rules.

To the extent people are aware of and abide by the restrictions associated with the rule set, the frequency of the take of species added to the rule set will be reduced. Take of species removed from the rule set may increase.

B. Describe the difference between current behavior/practice and desired behavior/practice.

The current rule set restricts the take of certain rare species to prevent declines or extirpation. There are additional rare species that require legal protection and need to be added to the list, and there are some species that no longer require legal protection and can be removed from the list. The desired practice is to prohibit the take of species that are in need of legal protection.

C. What is the desired outcome?

The desired outcome is to update the current rule set so it accurately reflects those rare species that require legal protection to prevent declines, extirpation, or extinction of their populations.

7. Identify the harm resulting from the behavior that the proposed rules are designed to alter and the likelihood that the harm will occur in the absence of the rule.

Without the rule set, legal take could occur regularly and without restriction because of collection, habitat degradation and destruction, and other actions that reduce viability of rare species. This take could contribute to declines in population sizes and distribution of rare species and could result in the extirpation of some species within Michigan.

A. What is the rationale for changing the rules instead of leaving them as currently written?

If the rule set is not changed, some rare species would not receive legal protection required to prevent declines or extirpation. Conversely, some species that no longer require legal protection would remain listed in the current rule set and take of those species would continue to be restricted.

8. Describe how the proposed rules protect the health, safety, and welfare of Michigan citizens while promoting a regulatory environment in Michigan that is the least burdensome alternative for those required to comply.

The proposed rules restrict the take of certain rare species to prevent declines or extirpation. Declining or extirpated populations can have a detrimental impact on the rest of the ecosystem. Healthy ecosystems depend on plant and animal species as their foundation. When a species becomes threatened or endangered, it is a sign the ecosystem is failing. The proposed rules protect the health, safety, and welfare of Michigan citizens by maintaining healthy ecosystems that provide clean air, water, land, food, medicines, and other products that are needed to live healthy lives. In addition, protecting these species supports Michigan's multi-billion-dollar natural resources economy, giving the public a place to hike, bike, boat, fish, hunt, and enjoy the natural resources of this state.

9. Describe any rules in the affected rule set that are obsolete or unnecessary and can be rescinded.

There are no rules in the rule set that are obsolete or unnecessary and can be rescinded.

Fiscal Impact on the Agency

Fiscal impact is an increase or decrease in expenditures from the current level of expenditures, i.e. hiring additional staff, higher contract costs, programming costs, changes in reimbursements rates, etc. over and above what is currently expended for that function. It does not include more intangible costs for benefits, such as opportunity costs, the value of time saved or lost, etc., unless those issues result in a measurable impact on expenditures.

10. Please provide the fiscal impact on the agency (an estimate of the cost of rule imposition or potential savings for the agency promulgating the rule).

The costs associated with the administration of the rule set and associated regulations have been incurred by the Department for decades. The Department estimates that there will be no additional costs or potential savings by promulgating the rule.

11. Describe whether or not an agency appropriation has been made or a funding source provided for any expenditures associated with the proposed rules.

The nongame fish and wildlife trust fund provides funding for research and management of nongame fish and wildlife and designated endangered and threatened animal and plant species.

12. Describe how the proposed rules are necessary and suitable to accomplish their purpose, in relationship to the burden(s) the rules place on individuals. Burdens may include fiscal or administrative burdens, or duplicative acts.

The proposed rules are necessary and suitable to accomplish their purpose of protecting certain rare species from take. The proposed rules restrict take of certain rare species to prevent the decline or extirpation of populations; a permit is required for the take of listed species for scientific, zoological, or educational purposes, or where necessary to alleviate damage to property or to protect human health. Burdens for individuals may include costs associated with the requirements of legally maintaining permittee status such as surveys, activity reports, and monitoring species.

A. Despite the identified burden(s), identify how the requirements in the rules are still needed and reasonable compared to the burdens.

The rules are still needed to provide legal protection of those rare species in danger of decline or extirpation. The rules prevent the extinction of rare species, help recover populations, and protect ecosystem functions. Providing legal protection of these rare species is necessary for their continued ability to sustain themselves successfully and ultimately provides all humans and wildlife with healthy ecosystems that provide clean air, water, land, food, medicines, and other products that are needed for the quality of life.

Impact on Other State or Local Governmental Units

13. Estimate any increase or decrease in revenues to other state or local governmental units (i.e. cities, counties, school districts) as a result of the rule. Estimate the cost increases or reductions for other state or local governmental units (i.e. cities, counties, school districts) as a result of the rule. Include the cost of equipment, supplies, labor, and increased administrative costs in both the initial imposition of the rule and any ongoing monitoring.

The rule set is not new, therefore no increases or decreases in revenues to other state or local governmental units are expected as a result of the proposed rules.

14. Discuss any program, service, duty, or responsibility imposed upon any city, county, town, village, or school district by the rules.

As is with the current ruleset and as is required by MCL 324.36505, any city, county, town, village, or school district is required to obtain a permit from the Department of Natural Resources when: the take of species is unavoidable but acceptable, transplanting a species is necessary, collecting specimens for any reason, or new construction may result in take of a species. The rules provide the list of threatened and endangered species that trigger the permit requirements. Other programs, services, and duties are not required by cities, counties, towns, villages, or school districts.

A. Describe any actions that governmental units must take to be in compliance with the rules. This section should include items such as record keeping and reporting requirements or changing operational practices.

Governmental units must comply with the rules and regulations associated with the take of a protected species, including obtaining a permit and submitting a report to the Department of Natural Resources. A permit is required for governmental agencies taking species for scientific, zoological, or educational purposes, or where necessary to alleviate damage to property or to protect human health and safety. Governmental agencies must submit a report that includes information about the species being taken under the permit.

15. Describe whether or not an appropriation to state or local governmental units has been made or a funding source provided for any additional expenditures associated with the proposed rules.

At this time, no appropriations have been made to any governmental units as a result of these rules. No additional expenditures are anticipated or intended with the proposed rules.

Rural Impact

16. In general, what impact will the rules have on rural areas?

In general, this may have a small impact on rural areas because legal protections of rare species may slow or halt recreational use and development projects until management plans are in place to preserve the rare species and its habitat.

A. Describe the types of public or private interests in rural areas that will be affected by the rules.

The rule set affects those interests, public or private, whose activities/projects will have an impact on endangered and threatened species. This may include governmental agencies, non-governmental organizations, and private landowners.

Environmental Impact

17. Do the proposed rules have any impact on the environment? If yes, please explain.

Yes. The proposed rules provide protection to those species in danger of decline or extirpation. Protection of these species also protects their habitats. The decline or extinction of a species can be detrimental to the ecosystem. Each species has a unique function in its ecosystem and its loss can have effects throughout the food chain, impacting other species, their habitats, and the ecosystem itself.

Small Business Impact Statement

18. Describe whether and how the agency considered exempting small businesses from the proposed rules.

All citizens are required to comply with Public Act 451 of 1994, Part 365, and all citizens can enjoy the benefits derived from the conservation of rare species and their ecosystems. The rule set does not change how small businesses are required to comply with the law; exempting small businesses would require an amendment to Public Act 451 of 1994, Part 365.

19. If small businesses are not exempt, describe (a) the manner in which the agency reduced the economic impact of the proposed rules on small businesses, including a detailed recitation of the efforts of the agency to comply with the mandate to reduce the disproportionate impact of the rules upon small businesses as described below (in accordance with MCL 24.240(1)(a-d)), or (b) the reasons such a reduction was not lawful or feasible.

The rule set does not change how small businesses are required to comply with the law; thus, the economic impact on small businesses will not change.

A. Identify and estimate the number of small businesses affected by the proposed rules and the probable effect on small businesses.

Only a small proportion of citizens are affected by the rule set in a regulatory manner. The Department issues or renews approximately 250 Threatened and Endangered Species permits per year, and the rule set affects the individuals or businesses whose activities are authorized under those permits. The total number of small businesses the rules set affects is much smaller than the total number of affected individuals. The Department of Natural Resources does not expect an impact on the vast majority of small businesses in Michigan.

B. Describe how the agency established differing compliance or reporting requirements or timetables for small businesses under the rules after projecting the required reporting, record-keeping, and other administrative costs.

The compliance and reporting requirements remain unchanged. The rule set does not change how small businesses are required to comply with the law, compliance and reporting requirements require an amendment to Public Act 451 of 1994, Part 365.

C. Describe how the agency consolidated or simplified the compliance and reporting requirements for small businesses and identify the skills necessary to comply with the reporting requirements.

The agency did not consolidate or simplify compliance and reporting requirements for small businesses with the proposed rules. The rule set does not change how small businesses are required to comply with the law, compliance requirements require an amendment to Public Act 451 of 1994, Part 365.

D. Describe how the agency established performance standards to replace design or operation standards required by the proposed rules.

The Department of Natural Resources did not establish performance standards to replace design or operation standards required by these rules.

20. Identify any disproportionate impact the proposed rules may have on small businesses because of their size or geographic location.

Collectively, threatened and endangered species have a statewide distribution. Therefore, the rule set could affect small businesses in any region of Michigan. The rule set is not expected to have a disproportionate impact on small businesses as a result of their size or geographic location.

21. Identify the nature of any report and the estimated cost of its preparation by small businesses required to comply with the proposed rules.

The rule set is not new, and the amendment does not create new costs. Costs to small businesses associated with the rule set have been in place for decades. In some cases, activity and monitoring may be required as part of the permit conditions. The time and costs to complete a report varies according to the location, scope, and nature of proposed projects.

22. Analyze the costs of compliance for all small businesses affected by the proposed rules, including costs of equipment, supplies, labor, and increased administrative costs.

The rule set is not new, and the amendment does not create new costs. Costs to small businesses associated with the rule set have been in place for decades. No fees are associated with environmental reviews or permit applications. Some small businesses may incur costs associated with surveys for threatened and endangered species and measures to avoid, minimize and mitigate adverse impacts to those species. The annual statewide costs vary according to the location, scope, and nature of proposed projects.

23. Identify the nature and estimated cost of any legal, consulting, or accounting services that small businesses would incur in complying with the proposed rules.

The rule set is not new, and the amendment does not create new costs. Costs to small businesses associated with the rule set have been in place for decades. In some cases, small businesses may need to hire consultants to conduct surveys and other actions associated with threatened and endangered species. The costs of labor and equipment vary according to the location, scope, and nature of proposed projects. The surveys and other activities associated with threatened and endangered species are often relatively small components of the broad environmental assessments required for many projects under different regulations.

24. Estimate the ability of small businesses to absorb the costs without suffering economic harm and without adversely affecting competition in the marketplace.

The rule set will have no impact on the vast majority of small businesses in Michigan. Any costs incurred would generally be small and could be absorbed without economic harm or adverse effects on competition in the marketplace.

25. Estimate the cost, if any, to the agency of administering or enforcing a rule that exempts or sets lesser standards for compliance by small businesses.

Under current law, all entities, private and public, are subject to the same restrictions. Lesser standards or exemptions for small businesses could not be established without amending Public Act 451 of 1994, Part 365.

26. Identify the impact on the public interest of exempting or setting lesser standards of compliance for small businesses.

Lesser standards or exemptions for small businesses would be inconsistent with the public interest regarding protection of rare species and could reduce the public benefits derived from the conservation of those species and their ecosystems.

27. Describe whether and how the agency has involved small businesses in the development of the proposed rules.

As required by law, the Department of Natural Resources will hold a public meeting to encourage public input regarding the proposed rule set. Small businesses and the public will be given an opportunity to provide input at this meeting and in a subsequent comment period.

A. If small businesses were involved in the development of the rules, please identify the business(es).

There were no small businesses involved in the development of the rules.

Cost-Benefit Analysis of Rules (independent of statutory impact)

28. Estimate the actual statewide compliance costs of the rule amendments on businesses or groups.

The rule set is not new, and the amendment does not create new costs. Costs to businesses or groups associated with the rule set have been in place for decades. No fees are associated with environmental reviews or permit applications. Some businesses or groups may incur costs associated with surveys for threatened and endangered species and measures to avoid, minimize, and mitigate adverse impacts to those species. The annual statewide compliance costs to businesses or groups vary according to the location, scope, and nature of proposed projects.

A. Identify the businesses or groups who will be directly affected by, bear the cost of, or directly benefit from the proposed rules.

The businesses or groups who are directly affected by, bear the costs of, or directly benefit from the proposed rules are all entities, public and private, whose proposed projects have potential impacts to threatened and endangered species. An example of a entities that may be directly affected by the rules are developers who want to construct new structures in habitats where threatened and/or endangered species live. The public, conservation groups, and outdoor recreation groups directly benefit from the ruleset because threatened and endangered species within the State's borders are protected from extinguishment.

B. What additional costs will be imposed on businesses and other groups as a result of these proposed rules (i.e. new equipment, supplies, labor, accounting, or recordkeeping)? Please identify the types and number of businesses and groups. Be sure to quantify how each entity will be affected.

No additional costs will be imposed on any businesses or groups.

29. Estimate the actual statewide compliance costs of the proposed rules on individuals (regulated individuals or the public). Include the costs of education, training, application fees, examination fees, license fees, new equipment, supplies, labor, accounting, or recordkeeping.

The rule set is not new, and the amendment does not create new costs. Costs to individuals associated with the rule set have been in place for decades. No fees are associated with permit applications. Some individuals may incur costs associated with surveys for threatened and endangered species and measures to avoid, minimize and mitigate adverse impacts to those species. The annual statewide costs to individuals vary according to the location, scope, and nature of proposed projects.

A. How many and what category of individuals will be affected by the rules?

All citizens are required to comply with Public Act 451 of 1994, Part 365, however only a small proportion of citizens are affected by the rule set in a regulatory manner. Only those individuals whose proposed projects have potential impacts to threatened and endangered species will be affected by the rules.

B. What qualitative and quantitative impact do the proposed changes in rules have on these individuals?

There are no qualitative or quantitative impacts as it relates to the actual statewide compliance costs of the proposed rules because the proposed rules are not expected to increase or decrease costs.

30. Quantify any cost reductions to businesses, individuals, groups of individuals, or governmental units as a result of the proposed rules.

There are no costs reductions for businesses, individuals, groups of individuals, or governmental units as a result of the proposed rules.

31. Estimate the primary and direct benefits and any secondary or indirect benefits of the proposed rules. Please provide both quantitative and qualitative information, as well as your assumptions.

The rule set, in conjunction with Public Act 451 of 1994, Part 365, confers legal protection to threatened and endangered species. It helps prevent decline in population sizes and distribution of rare species, helps prevent the extirpation of some species within Michigan, and helps conserve the ecosystems on which they depend.

Conservation of rare species and their ecosystems has ecological, educational, cultural, and economic benefits. Persistence of rare species is an indicator of a healthy ecosystem. Healthy ecosystems perform several critical functions, such as nutrient cycling, gas cycling, and water filtration, that would cost billions of dollars to replace. Conservation of rare species and their ecosystems provides opportunities for people to study, experience, and appreciate unique components of the natural world. These opportunities often translate into local economic benefits because people travel to local communities to study or observe wildlife and for other outdoor recreation.

32. Explain how the proposed rules will impact business growth and job creation (or elimination) in Michigan.

The proposed rules are not expected to have a significant impact on business growth, job growth, or job elimination.

33. Identify any individuals or businesses who will be disproportionately affected by the rules as a result of their industrial sector, segment of the public, business size, or geographic location.

Collectively, threatened and endangered species have a statewide distribution. Therefore, the rule set could affect individuals or businesses in any region of Michigan. The rule set is not expected to have a disproportionate impact on individuals or businesses due to their industrial sector or segment of the public.

34. Identify the sources the agency relied upon in compiling the regulatory impact statement, including the methodology utilized in determining the existence and extent of the impact of the proposed rules and a cost-benefit analysis of the proposed rules.

Species Taxa Technical Advisory Committees, which included biologists from agencies, universities, and non-governmental organizations; supervisors with direct experience with the rule set; the Federal Endangered Species Act and the Federal List of Endangered and Threatened Wildlife and Plants; personal experience with the rule set and working knowledge of the department's Threatened & Endangered Species Program.

A. How were estimates made, and what were your assumptions? Include internal and external sources, published reports, information provided by associations or organizations, etc., that demonstrate a need for the proposed rules.

No estimates were made because the proposed rules have no measurable economic impact on individuals, businesses, or governmental units of the state.

Alternative to Regulation

35. Identify any reasonable alternatives to the proposed rules that would achieve the same or similar goals.

There are no reasonable alternatives to the proposed rules that would achieve the same or similar goal.

A. Please include any statutory amendments that may be necessary to achieve such alternatives.

Because there are no alternatives that can achieve the same goal as the proposed rules, no statutory amendments apply.

36. Discuss the feasibility of establishing a regulatory program similar to that proposed in the rules that would operate through private market-based mechanisms. Please include a discussion of private market-based systems utilized by other states.

Since the rules are required by statute, private market-based systems cannot serve as an alternative. Collectively, threatened and endangered species have a statewide distribution, and a State-administered rule set is the most effective way to help ensure adequate and consistent protection of those species. Given the exceedingly large number of municipalities in Michigan, development of a private market-based regulatory scheme that consistently and adequately protects rare species is not feasible. There are no private market-based systems utilized by other states that the agency is aware of.

37. Discuss all significant alternatives the agency considered during rule development and why they were not incorporated into the rules. This section should include ideas considered both during internal discussions and discussions with stakeholders, affected parties, or advisory groups.

There were no significant alternatives presented to the agency to consider.

Additional Information

38. As required by MCL 24.245b(1)(c), please describe any instructions regarding the method of complying with the rules, if applicable.

No additional instructions are needed to comply with the proposed rule changes.