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July 12, 2024

Dan Rosenblatt, Ph.D.
Division of Fish and Wildlife
New York State Department of
Environmental Conservation
625 Broadway
Albany, NY. 12233-4754

**Re: Comments on Proposed Regulations, 6 NYCRR Part 182
Endangered and Threatened Species; Species of Special
Concern; Incidental Take Permits**

Dear Dr. Rosenblatt:

Protect the Adirondacks (“PROTECT”) is pleased to submit these comments to the Department of Environmental Conservation (“DEC”) in support of DEC’s proposed regulations, 6 NYCRR Part 182, for implementing New York’s Endangered Species Act, Environmental Conservation Law § 11-0535.

General Comments

PROTECT commends DEC for releasing these proposed regulations that provide crucial protections for imperiled species and their habitat. The proposed regulations reflect DEC’s years of experience in conserving at-risk species and in administering the incidental take permit program, and are consistent with the court decisions interpreting New York’s Endangered Species Act. *See, e.g., State v. White Oak Co., LLC*, 13 AD3d 435 (2d Dept. 2004); *State v. Sour Mtn. Realty Inc.*, 276 AD2d 8 (2d Dept. 2000). Moreover, the regulations provide clarity and guidance concerning procedures, application requirements and standards for incidental take permits.

PROTECT fully supports DEC’s proposed requirement that applicants demonstrate a “net conservation benefit” to a protected species in order to obtain an incidental take permit. Because such permits allow the take of an already imperiled species or its habitat, it is appropriate and necessary that such

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action be counterbalanced by measures that provide a net benefit for the continued survival of the species and/or protection of habitat.

Specific Comments

Definitions:

“Essential behavior” § 182.2(f): PROTECT suggests that the phrase “normal or traditional” be deleted from the definition’s reference to behaviors “that are a part of its normal or traditional life cycle . . .” Because the definition already specifies that such behaviors be “essential to its survival and perpetuation,” the phrase is redundant. In addition, it could lead to confusion regarding which behaviors are “normal” or “traditional,” particularly for species that have not been well-studied.

“Experimental population” § 182.2(g): PROTECT suggests amending this definition to add the following underlined phrase: “. . . for introduction into an experimental population area to aid in recovery or restoration of the species within New York.” It is important to make clear that DEC will have the ability to classify a population of a species that is being restored (as opposed to recovered) as experimental.

“Extirpated” or “Extirpation” § 182.2(j): PROTECT suggests that the following sentence be added to the end of this definition: “Provided, however, a species shall not be considered extirpated if there has been one or more documented instances of the species being present in New York in a wild state within the last ten years.” It is important to recognize that individual members of a wide-ranging species such as wolf or cougar that has long been absent from New York may migrate into the State and remain. Such instances should eliminate the classification as extirpated, particularly since the public is likely to confuse “extirpated” with “extinct.” In the case of wolves, the erroneous belief that wolves are never present in New York has led to hunters mistaking wolves for large coyotes and killing them.

Recovery Plans and Restoration Plans:

PROTECT suggests that the following underlined language be added to § 182.6(b):

“The department may, at its discretion, prepare and adopt a restoration plan for any extirpated species or for any species that is occasionally present in a wild state but which has not established a breeding population in the State. A restoration plan will include current biological information on the species, a discussion of its historical status in New York, an analysis of past, present, and future threats and habitat conditions, response to management, and steps necessary for reestablishment of the species in the State. Uncertainty as to the specific genetic composition of the species that historically inhabited the State shall not preclude the department from preparing a restoration plan for that species based on the best available scientific and genetic information.”

The change in the first sentence is necessary to maintain consistency with the proposed change to the definition of “extirpated” set forth above. The addition of the last sentence is to clarify that DEC should not be prevented from preparing a restoration plan for a species solely because there

is some uncertainty concerning the exact genetic composition of the species that historically occupied the State.

Exemptions from Incidental Take Permit Requirements

Section 182.13(a)(6) exempts from incidental take permit requirements “Activities that would result in incidental take of members of an experimental population within an experimental population area designated pursuant to 182.17 of this Part.” This exemption is much too broad and is at odds with the purpose of establishing an experimental population, which is the introduction of members of an endangered or threatened species into a discrete geographic area “to aid in the recovery of the species within New York.” §§ 182.2(g), 182.2(h). Allowing the uncontrolled take of members of an experimental population undermines the very recovery goal of establishing such a population in an experimental population area. Accordingly, this exemption should be deleted or amended to allow the take of members of an experimental population only as part of official activities related to the experimental introduction.

On behalf of the Board of Directors of Protect the Adirondacks, we thank you for considering our comments regarding this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Chris Amato", written in a cursive style.

Christopher Amato
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