

**§12808-A. Authorized activities regarding endangered or threatened species**

Notwithstanding section 12808 and notwithstanding section 10650 as it applies to rules adopted in accordance with this subchapter, the commissioner may authorize certain activities regarding endangered or threatened species in accordance with the following. [PL 2015, c. 423, §2 (NEW).]

**1. Education, research, conservation and transportation.** Under such terms and conditions as the commissioner prescribes, the commissioner may:

A. Authorize an act prohibited by section 12808 or by rule for educational or scientific purposes or to enhance the recovery or survival of an endangered or threatened species; and [PL 2015, c. 423, §2 (NEW).]

B. Authorize a person to transport without restriction but in accordance with the terms of any federal or state permit an endangered or threatened species into, within or out of the State. [PL 2015, c. 423, §2 (NEW).]  
[PL 2015, c. 423, §2 (NEW).]

**2. Specific activity; incidental take plan.** Under such terms and conditions as the commissioner prescribes, the commissioner may authorize a person to take an endangered or threatened species pursuant to an incidental take plan if:

A. The taking is incidental to, and not the purpose of, carrying out an otherwise lawful activity; [PL 2015, c. 423, §2 (NEW).]

B. The taking will not impair the recovery of any endangered or threatened species; and [PL 2015, c. 423, §2 (NEW).]

C. The person develops and implements an incidental take plan in accordance with subsection 5 and that plan is approved by the commissioner. The commissioner may modify or waive the requirement under this paragraph if the commissioner determines the criteria in subsection 5 are substantially addressed in another permit, license or agreement. [PL 2015, c. 423, §2 (NEW).]

The commissioner shall seek input from knowledgeable individuals or groups on each proposed incidental take plan developed under this subsection.

If the person violates any of the terms or conditions of an authorization granted pursuant to this subsection, the authorization must be immediately suspended or revoked and the person is subject to the prohibitions and penalties in section 12808 for that violation.

[PL 2015, c. 423, §2 (NEW).]

**3. Widespread activity; incidental take plan.** Under such terms and conditions as the commissioner prescribes, the commissioner may authorize the taking of an endangered or threatened species pursuant to a widespread activity incidental take plan developed by the commissioner in accordance with subsection 5 if:

A. The taking is incidental to, and not the purpose of, carrying out an otherwise lawful activity; [PL 2015, c. 423, §2 (NEW).]

B. The taking will not impair the recovery of any endangered or threatened species; and [PL 2015, c. 423, §2 (NEW).]

C. The commissioner determines that the activity is widespread, is conducted by a reasonably identifiable group of participants and poses a manageable risk of taking an endangered or threatened species. [PL 2015, c. 423, §2 (NEW).]

The commissioner shall hold at least one public hearing and seek input from knowledgeable individuals or groups on each proposed incidental take plan developed under this subsection.

If a person violates any of the terms or conditions of an authorization granted pursuant to this subsection, the authorization must be immediately suspended or revoked for that person and that person is subject to the prohibitions and penalties in section 12808 for that violation.

[PL 2015, c. 423, §2 (NEW).]

**4. Broad activity exemption.** The commissioner may adopt rules to provide an exemption, under such terms and conditions as the commissioner determines necessary, for a specific activity otherwise prohibited by section 12808, if the commissioner determines the exemption:

A. Addresses a specific activity that is widespread in its occurrence but may not have a reasonably identifiable group of participants; [PL 2015, c. 423, §2 (NEW).]

B. Poses little or no risk of taking an endangered or threatened species; and [PL 2015, c. 423, §2 (NEW).]

C. Will not individually or cumulatively impair the recovery of any endangered or threatened species. [PL 2015, c. 423, §2 (NEW).]

The commissioner shall hold at least one public hearing and seek input from knowledgeable individuals or groups on each proposed rule to provide a broad activity exemption.

Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

[PL 2015, c. 423, §2 (NEW).]

**5. Incidental take plan criteria.** The commissioner may approve or adopt an incidental take plan developed pursuant to subsection 2 or 3 that minimizes the incidental taking of an endangered or threatened species and that provides the following:

A. A description of the specific activities sought to be authorized by the incidental take plan and an analysis of potential alternatives; [PL 2015, c. 423, §2 (NEW).]

B. The individual and cumulative effects that may reasonably be anticipated to result from the proposed actions covered by the incidental take plan; [PL 2015, c. 423, §2 (NEW).]

C. The recovery measures the applicant will implement to prevent, minimize and mitigate the individual and cumulative effects and any provisions that are necessary to prevent, minimize and mitigate circumstances that are likely to impair the recovery of any endangered or threatened species covered by the incidental take plan; [PL 2015, c. 423, §2 (NEW).]

D. The procedures for monitoring the effectiveness of the recovery measures in the incidental take plan; [PL 2015, c. 423, §2 (NEW).]

E. The anticipated costs of implementing the incidental take plan and the availability of necessary funding for the applicant to implement the plan; and [PL 2015, c. 423, §2 (NEW).]

F. Other modifications to the incidental take plan or additional measures, if any, that the commissioner may require and such other matters as the commissioner determines to be necessary for the recovery of species consistent with this section. [PL 2015, c. 423, §2 (NEW).]

[PL 2015, c. 423, §2 (NEW).]

#### SECTION HISTORY

PL 2015, c. 423, §2 (NEW).

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