

## State Endangered Species Laws and Coastal Zone Management Programs

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### Threatened and Endangered Species and Coastal Habitats

Coastal habitats are extremely important for wildlife species, birds, fish, and invertebrates. The U.S. Fish & Wildlife has determined that 45 percent of the nation's threatened and endangered species are directly dependent on coastal habitats. (U.S. Fish & Wildlife Service, *Coastal Ecosystems Program*, 1995).

In addition to the protections afforded by federal law to federally listed threatened and endangered species under the Endangered Species Act, 16 U.S.C. §§1531-1544, nearly every state has its own laws protecting state-listed species.

Of the states with coastal zone management programs only Alabama has no state endangered species law.

### Virginia Coastal Zone and T&E Species

In the coastal zone context, Virginia has formally recognized the importance of threatened and endangered species and their habitats since the original 1986 Executive Order creating the networked coastal resources program:

Executive Order 13(86) "Establishment of Virginia Coastal Resources Management Program" (June 23, 1986) –

"State agencies having responsibility for the Commonwealth's coastal resources shall promote the Program consistently with the following objectives...10.To maintain areas of *wildlife habitat* and to *preserve endangered species of fish and wildlife.*"

Executive Order No. 18 (2010) "Continuation of the Virginia Coastal Zone Management Program" –

"State agencies having responsibility for the Commonwealth's coastal resources shall promote the Coastal Zone Management Program consistent with the following goals: Goal 1: To protect and restore *coastal resources, habitats, and species* of the Commonwealth. These include, but are not limited to, wetlands, subaqueous lands and vegetation, beaches, sand dune systems, barrier islands, underwater or maritime cultural resources, riparian forested buffers, and *endangered or threatened species.*"

*Note that the more recent versions of the order, since 2002 and incorporated by routine program change into Virginia's CZM Program, do not specifically limit the programmatic reference just to "fish and wildlife" endangered species, and they explicitly use the term "threatened" as well as "endangered" species.*

Virginia's state endangered species laws were not a special focal point within the original Management Plan's list of eight "core regulatory programs" (fisheries management subaqueous lands management, wetlands management, dunes management, nonpoint source pollution control, point source pollution control, shoreline sanitation, and air pollution control). But protection of habitats and conservation of key areas have been

central to the program. Virginia has not listed its state endangered species authority directly as an enforceable policy in making federal consistency determinations.

### **State Endangered Species Laws and Coastal Zone Programs Generally**

State laws listing and protecting species vary quite a bit among themselves and in comparison with the federal law. Some state laws protect only wildlife species, some prohibit only directing taking of listed species, some prohibit only sale and trafficking in listed species and species parts. Some state laws provide for listing of critical habitat, and for development of recovery plans. Some provide for mitigation, habitat conservation planning and incidental take authorizations. For example, only six states have provisions requiring states to designate critical habitat for listed state species. (S. George and W.J. Snape III, "State Endangered Species Acts," in D. Baur & W.R. Irvin, Endangered Species Act: Law, Policy & Perspectives, 2d ed. (American Bar Assn.)

States typically integrate endangered species protections at least to some degree in their approved coastal zone management program.

For example, Maryland has listed its state endangered species laws as an enforceable policy. In its most current re-statement (pending NOAA review as a routine program change) Maryland's enforceable policies provide (among other things): "No one may take a State listed endangered or threatened species of fish or wildlife." (citing Md. Code Ann. Nat. Res. §§ 4-2A-01 et seq., 4-10A-01 et seq.) "Shore erosion control projects shall not occur when...threatened or endangered species, [or] species in need of conservation...may be adversely affected by the project." (citing COMAR 26.24.04.01).

Delaware's state endangered species law prohibits only possession, transportation, sale and trafficking in listed species, but not taking, killing, or habitat destruction (7 Del. Code § 601). However, Delaware's approved coastal zone management program includes *enforceable policies* that protect habitats important for these and other species, including: "No activity shall have an adverse environmental effect on living resources and shall include consideration of the effect of site preparation and the proposed activity on the following wetland values:... (b) Habitat value... (4) Habitat for rare or endangered plants. (5) Presence of plants or animals known to be rare generally, or unique to the particular location." (Del. CZM Enf. Policies 5.11.1.1). "Rare and endangered species are in need of active, protective management to preserve and enhance such species. The diversity and abundance of the native flora and fauna of Delaware, particularly those deemed rare or endangered, shall be preserved and enhanced through the protection of the habitat, natural areas, and areas of unusual scientific significance or having unusual importance to their survival." (Del. CZM Enf. Policies 5.11.3.2). "Construction of marinas shall not be permitted at sites that are recognized by the DNREC as critical habitats... [including] unique aquatic or terrestrial ecosystems that support rare endangered or threatened plants and animals... defined by both state and/or federal listings." (Del. CZM Enf. Policies 5.3.2.9).

It is not unusual for protection of state threatened and endangered species to be incorporated as part of the considerations for habitat protection under more specific provisions addressing construction, erosion, wetlands, etc.